CLERK'S COPY.

Vol. I

(PART 1)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 26, 1931

(36,299, 36,300)

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VOL. I

(PART 1)

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Original Print

subsurface bed known as the Checker Board limestone.

The red line marked "approximate east limits of Wilcox sand wells" is self-defining, the red line indicating area of Arbuckle lime wells is likewise self-defining, the area included within that portion of said map between the areas so defined by said red lines being the "School Land" and the "Johnson" sand zones of the Simpson formation, of which the Wilcox sand zone is also an upper producing bed.

No. 8..... 3 2b

A chart consisting of a delineation of a normal vertical Ordovician (geologic system or time division of rocks), column or section, as found generally in the Oklahoma City field and throughout Oklahoma, identified as as Figure I; that said figure divides the Simpson formation into zones, with the chief lithological characteristics of each of the same.

That Figure I also indicates the upper portion of the producing Arbuckle or siliceous limestone underlying the Simpson formation with its lithologic characteristics; and

A delineation of an east-west cross-section of the Ordovician beds in the Oklahoma City field, identified as Figure 2; that said figure indicates a buried Ordovician faulted, anticlinal ridge, upon which truncation has removed the upper portion of the Arbuckle limestone near the "fault" line, indicated to the extreme right of the figure by an inclined vertical line in black, and has likewise removed progressively westward the up-tilted beds overlying the Arbuckle limestone, namely, the Johnson sand zone, the School Land sand zone, the Wilcox sand zone, and the Simpson limestone, which limestone is likewise indicated in blue color to the right of the "fault" line.

That overlying the defined plane of truncation exist a series of shales and limestones of the Pennsylvanian Age, which serve as a caprock to hold the oil and gas in the producing zones of the older Ordovician beds.

That said figure also indicates the location and depth of the respective Champlin wells in the producing formations.

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	Original	Print
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	Original	Print
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[fols. a-1-3] Citation, in usual form, showing service on Jesse L. Ballard et al., filed October 19, 1931, omitted in printing.

[fols. 4-6] Citation, in usual form, showing service on Geo. S. Ramsey, et al., filed October 22, 1931, omitted in printing.

[fol. 7]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

ORDER EXTENDING TIME WITHIN WHICH TO FILE RECORD IN THE SUPREME COURT OF THE UNITED STATES—Filed Oct. 17, 1931

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal sued out, is extended until the 25th day of November, 1931.

Dated this the 15 day of October, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 8] IN UNITED STATES DISTRICT COURT

ORDER DESIGNATING JUDGE—Filed Dec. 31, 1930

UNITED STATES OF AMERICA,
Tenth Circuit:

In my judgment the public interests require the designation and appointment of a Judge of this Circuit to hold and

assist in holding the District Court of the United States for the Western District of Oklahoma, in place or in aid of the District Judge of that District:

I do, therefore, by these presents designate and appoint the Honorable Franklin E. Kennamer, United States District Judge for the Northern District of Oklahoma, to hold or assist in holding the District Court of the United States in and for the several divisions of the Western District of Oklahoma, at the times and places appointed by law for holding said court, from January 1, 1931, until December 31, 1931, inclusive, in place or in aid of the Honorable Edgar S. Vaught, United States District Judge for the said Western District of Oklahoma.

Witness my hand this 29th day of December, A. D. 1930.

Robert E. Lewis, Senior Circuit Judge.

[File endorsement omitted.]

[fol. 9] IN UNITED STATES DISTRICT COURT

NOTICE—Filed Dec. 10, 1930

To the Honorable William J. Holloway, Governor of Oklahoma; Honorable J. Berry King, Attorney General; the Corporation Commission of the State of Oklahoma, C. C. Childers, Fred Capshaw, and E. R. Hughes:

This is to notify you, and each of you that the Champlin Refining Company, a corporation of Enid, Oklahoma, plaintiff in the above entitled cause, has filed in the United States District Court for the Western District of Oklahoma, its application for a hearing for a temporary injunction and its Second Amended and Supplemental Bill of Complaint in cause Number 1156, Equity, and under the allegations of said Second Amended and Supplemental Bill of Complaint and said application asks an immediate hearing in said Court for a temporary injunction, and the same will be heard on Wednesday, December 17th, 1930, at the hour of ten o'clock A. M., or as soon thereafter as the court can hear the same, at the United States District Court room in the Federal Building at Oklahoma City, Oklahoma. A copy of said Second Amended and Supple-

mental Bill of Complaint is hereto attached and furnished herewith.

Dated this 6th day of December, 1930.

Champlin Refining Company, by Horace G. McKeever, Its Attorney.

Received the within Notice at Oklahoma City, Dec. 9th, 1930, and executed the same by delivering a true copy for J. Berry King, Atty. General to W. C. Lewis, Asst. Atty. Gen. Dec. 9th 1930, and copy hereof together with a copy of the petition for the Corporation Commission of the State of Oklahoma, to C. C. Childers, Chairman, in person, and a copy hereof together with a copy of the petition for William J. Holloway, Governor of the State of Oklahoma, to him in person Dec. 10th, 1930, all at Oklahoma City, Okla.

Richard B. Quinn, U. S. Marshal, by A. J. Thrasher, A. J. Thrasher, Deputy.

[File endorsement omitted.]

[fol. 10] IN UNITED STATES DISTRICT COURT

ORDER DENYING APPLICATION FOR TEMPORARY INJUNCTION—Filed Feb. 9, 1931

On this day the application of the plaintiff for a temporary injunction in said cause, presented in the amended and supplemental Bill herein against the enforcement by the defendants of oil proration orders of the Corporation Commission of the State of Oklahoma, and duly submitted upon the evidence of the parties and the arguments of counsel, January 2 and 3, 1931, comes on for determination, and after due consideration of the same, it is by the Court

Ordered, that said application be denied. To this order, the plaintiff at the time duly excepts.

Guthrie, Oklahoma, February 9, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, District Judge. —— ——, District Judge.

I dissent to the findings of fact by the majority of the court for the reason the complainants make no objection

to any order that the Corporation Commission may make enjoining actual waste.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 11] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 22, 1931

The above named plaintiff, conceiving himself aggrieved by the decree and order made in the above entitled cause on the 9th day of February, 1931, denying its application for a temporary injunction, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and prays that the appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree and order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this the 22nd day of April, 1931.

Horace G. McKeever, Harry O. Glasser, Geo. S. Ramsey, Edgar S. de Meules, Attorneys for Plaintiff-Appellee.

[File endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 22, 1931

Now, on this 22nd day of April, 1931, came the plaintiff Champlin Refining Company, a corporation, by its attorneys and files herein and presents to the Court its petition praying for the allowance of an appeal to the Supreme Court of the United States, and it appearing that the plaintiff has filed therewith its Assignment of Errors, and the Court being fully advised in the premises does hereby allow an appeal to the Supreme Court of the United States

as prayed for upon the filing of a bond in the sum of $1000.-00 with good and sufficient surety to be approved by the Court.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.

[File endorsement omitted.]

[fol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE TO THE GOVERNOR OF THE STATE OF OKLAHOMA—Filed June 13, 1931

To the Honorable William H. Murray, Governor of the State of Oklahoma:

You are hereby notified that the plaintiff in the above entitled action has filed its application praying for a temporary injunction against each and all of the above named defendants in the above entitled cause from imposing upon this plaintiff any of the statutory penalties provided in the Act of the Oklahoma Legislature approved February 11th, 1915, and from any of the statutory penalties for the violation of any orders, rules and regulations made and entered pursuant thereto by the Corporation Commission of the State of Oklahoma, and that such application for a tem-[fol. 14] porary injunction is set for hearing at the court room of the United States District Court for the Western District of Oklahoma at Guthrie, Oklahoma, at the hour of 9:00 o'clock A. M., on June 13th, 1931.

Dated this 8th day of June, 1931.

Horace G. McKeever, Harry O. Glasser, Geo. S. Ramsey, Edgar S. deMeules, Attorneys for Plaintiff.

Service of the above notice and the receipt of a copy thereof are hereby acknowledged to have been made on me as Governor of the State of Oklahoma, on this 8th day of June, 1931.

Wm. H. Murray, The Governor of the State of Oklahoma.

[File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF OKLAHOMA

No. 1156. Equity

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and Paul Walker, E. R. Hughes and C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and Their Successors in Office, and Paul Walker, E. R. Hughes, and C. C. Childers, and J. Berry King, as Attorney General of the State of Oklahoma, and J. Berry King, and Lewis R. Morris, as County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, Defendants

THIRD AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT FILED BY LEAVE OF COURT—Filed Aug. 3, 1931

Comes now the Champlin Refining Company, a corporation, as plaintiff, and by leave of court files this its third amended and supplemental bill of complaint as an amendment to its original bill and amended and supplemental bill and to its second amended and supplemental bill and substitute for all bills and amended bills herein, and herein alleges that it filed its original bill in this cause on September 17th, 1930, to restrain the enforcement of the Oil Curtailment Act hereinafter referred to, and on October 29th filed its second amended bill and supplemental bill, and on December 2, 1930, its supplemental and amended bill, and on May 29, 1931, its supplemental and amended bill, and further alleges:

I

That it is a corporation organized and existing under and by virtue of the laws of the State of New Mexico and it is a citizen of said state; that the defendants, Paul Walker, E. R. Hughes and C. C. Childers, and their successors in the office of Corporation Commissioners of the State of Oklahoma, are citizens of the State of Oklahoma with their resi-

dence and domicile in the Western Federal Judicial District of the State of Oklahoma.

[fol. 16] That the defendant J. Berry King is the duly elected, qualified and acting Attorney General of the State of Oklahoma; that he is a resident and citizen of Oklahoma County, Oklahoma; that the defendant Lewis R. Morris is the duly elected, qualified and acting county attorney in and for Oklahoma County, State of Oklahoma; that he is a resident and citizen of said county and state.

II

That it has complied with the Constitution and laws of the State of Oklahoma regulating the admission of foreign corporations to do business in the State of Oklahoma and is now and had been for a long time prior to the commencement of this suit doing business in the State of Oklahoma, with its principal office and place of business in the City of Enid, Garfield County, State of Oklahoma.

III

That the matter herein in controversy is in excess of $3,000.00 exclusive of interest and costs and arises under the Constitution and laws of the United States.

IV

That the Corporation Commission of the State of Oklahoma is a board created and vested with certain powers by Article 9 of the Constitution of the State of Oklahoma; that the defendants Paul Walker, E. R. Hughes and C. C. Childers are the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma; that at all times herein mentioned prior to January 10, 1931, the defendant Fred Capshaw was a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma; that his term of office as such member expired on the 10th day of January, 1931; that Paul Walker having been duly elected as a member of said Corporation Commission qualified as such member on the 10th day of January, 1931, and since then has been and is now a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma; that subsequently an order

was entered in this cause permitting it to be continued and maintained against Paul Walker as successor in office to [fol. 17] the defendant Fred Capshaw as a member of the Corporation Commission of the State of Oklahoma and substituting the said Paul Walker as a party defendant in lieu of said Fred Capshaw.

V

That it is now and has been since its incorporation engaged in the business of producing and refining crude oil and transporting and marketing petroleum, natural gas and their products in interstate and intrastate commerce; that it owns and operates an oil refinery at Enid, Oklahoma, with a capacity of refining 15,000 barrels of crude oil per day; that said refinery plant refines and manufactures gasoline, kerosene, lubricating oils, waxes, greases and other by-products; that it owns approximately 735 tank cars which it uses in the distribution of its refined products among its customers in Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California, and controls and operates approximately 470 miles of pipe line for the transportation of oil and gas in Oklahoma and other states and owns and operates approximately 263 retail gasoline filling stations and 256 wholesale gasoline stations in the State of Oklahoma, Kansas, Texas, Iowa, Colorado and Illinois, which it supplies from its Enid refinery, all of which represent an investment of several million dollars.

VI

That it is the owner and holder of oil and gas leases now and at all times mentioned in this bill in full force and effect on—

Lots 30, 31, 32, 33, 34, 35, 50 and 51, Block 2 of Roosevelt Place Addition to the City of Oklahoma City, Oklahoma, as shown by the recorded plat thereof.

Lots 23, 24, 25 and 26, Block Nine (9), Armourdale Addition to Oklahoma City, Oklahoma, same being a subdivision of the Northwest Quarter in Section Two (2), Township [fol. 18] Eleven (11) North, Range Three (3) W. I. M.,

Oklahoma County, Oklahoma, containing ½ acre, more or less.

All of Lots 3 to 20, inclusive, in Block Six (6), and all of Block Five (5) of Compton Park Addition to Oklahoma City, Oklahoma, according to the recorded plat thereof, containing 5 acres, more or less, being located in the Southwest Quarter (S. W. ¼) of Section 2-11 N-3 W., Oklahoma County, Oklahoma.

All of Block Seven (7) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 4.07 acres, more or less, composed of fifty 25-foot lots.

All of Block Eight (8) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 4.07 acres, more or less, composed of fifty 25-foot lots.

All of Block Fifteen (15) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.91 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Nineteen (19) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.91 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Twenty-two (22) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.88 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Twenty-three (23) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 2.11 acres, more or less, composed of twenty-four 25-foot lots.

All of Block Eighteen (18), Schilling Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.16 acres, more or less, composed of Thirty-six (36) 25-foot lots.

All of Block Eleven (11) in Eckroat Addition to Oklahoma City, and all of Block Two (2) in Layman's Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.95 acres, more or less, consisting of 44 lots, and [fol. 19] in what is generally known as the "Oklahoma City oil field"; that it is also and has been at all times herein mentioned the owner of oil and gas mining leases on the

East Half of the Southeast Quarter of the Northeast Quarter of Section 14, Township 7 North, Range 6 East, and an undivided one-half interest in the South Half of the South-

west Quarter of Section 9, Township 6, Range 6, all lying in Seminole County, State of Oklahoma,

and in what is generally known as the "Greater Seminole oil field."

And also is the owner of an oil and gas lease covering The Southeast Quarter of the Southeast Quarter and the South Half of the Northeast Quarter of the Southeast Quarter of Section 25, Township 23, North of Range 4 West, Garfield County, Oklahoma,

on which there is a producing well which is surrounded by approximately 600 acres of oil and gas leases owned by this plaintiff, and near which well there are no other producing wells, nor are there any correlative leasehold owners of the oil and gas rights in said pool from which said producing well obtains its production, and that there are no neighboring oil and gas leases whose lands are being drained by said well.

VII

That at an approximate cost of $1,250,000.00, it has drilled and completed nine (9) producing wells on the above described property in the Oklahoma City oil field, which wells have an aggregate potential capacity of 151,000 barrels of crude oil per day; and that it is now drilling one (1) additional well in the said Oklahoma City oil field, which well will cost approximately $140,000.00, and may reasonably be expected to produce an aggregate of 30,000 barrels of crude oil per day.

VIII

That the words "potential capacity" or "potential production" as herein used and as used in the findings and orders of the Oklahoma Corporation Commission, hereinafter referred to, mean the production of oil from a well or given wells without restriction and/or without pinching them or restraining the natural flow or the maximum flow [fol. 20] by pumping.

IX

That before any of the orders of the Corporation Commission herein complained of were made and promulgated

it has drilled and equipped nine wells on the said leases in the Greater Seminole Field with a potential capacity of 450 barrels of crude oil per day at the time this suit was filed on September 15th, 1930, at an approximate cost of $569,000.00.

X

That it owns and operates other oil and gas leases on lands in other oil and gas fields in Oklahoma in addition to those above described, which are also affected by the orders of the Oklahoma Corporation Commission herein complained of, with a potential capacity of approximately 1200 barrels of crude oil per day.

XI

That the Oklahoma Legislature passed an act (chapter 25, Cession Laws 1915, page 28) approved February 11th, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this act, and declaring an emergency," whereby it was enacted, in the first section thereof, "That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited;" that the second section of said act prohibited "the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum" and declared that the "actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same" and vested the Corporation Commission [fol. 21] "with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided" and declared that "when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general

circulation in the state;" that the 3rd, 4th and 5th sections of said act are as follows:

"Sec. 3. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

"Sec. 4. That whenever the full production from any common source of supply of crude oil or petroleum in this state, can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

[fol. 22] "Sec. 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the governor, as may be necessary to enforce this act.";

that the 6th section provides for a hearing before the Corporation Commission, and the 7th section confers upon the Supreme Court of the state "appellate jurisdiction" to

"review the action of said Commission in making any order, or orders, under this act, and authorizes an appeal "by any person, firm or corporation, shown by the record to be interested therein" and directs that "orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court."

Sections 8 and 9 are as follows:

"Sec. 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00) or by an imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"Sec. 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the state through the attorney general or any county [fol. 23] attorney, but such receivership, shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act."

Section 10 provides "that the invalidity of any section, subdivison, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof."

XII

That the material portions of the above act approved February 11th, 1915, are embodied in sections 7954 to 7963, inclusive, Oklahoma C. L. 1921, and will hereinafter be referred to as the "Oil Conservation Act" or "Conservation Act."

XIII

That the Oklahoma Legislature at its 1907-8 session (see section 3498, O. C. L. 1921) passed an act empowering the Corporation Commission to impose a fine upon "any cor-

poration, person or firm" violating "any of its rules or requirements" and made "each day's continuance of such violation, after due service upon such corporation, person or firm, of the order or requirement of the Commission" a separate offense, with the provision "that should the operation of such order or requirement be suspended, pending an appeal therefrom, the period of such suspension shall not be computed."

XIV

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendants, the Corporation Commission of the State of Oklahoma as then constituted, made and entered on June 30th, 1930, an order, No. 5189, in Corporation Commission cause No. 10146, the effect of which, if valid, was to restrict and curtail the production of crude oil in the Oklahoma City oil field, Greater Seminole oil field, and several other oil fields in the State of Oklahoma in which plaintiff owned and operated and now owns and operates the oil and gas wells heretofore referred to and other oil and gas wells, a copy of which order is hereto attached and made a part hereof as Exhibit "A"; and that in para- [fol. 24] graph (f) of the findings of fact in said order the Commission found as a fact, without any evidence before it, that "the potential production of crude oil from existing wells in Oklahoma on and following the first day of July, 1930, will be approximately 1,362,000 barrels per day, and that the daily demand from Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August and September, 1930," and "that, therefore, there is an excess of potential production over consumption of 712,000 barrels per day which cannot be produced without waste as defined by the statutes of Oklahoma," and that "if no restraint were placed upon producing wells * * * or upon wells hereafter drilled during the months of July, August and September, the potential production of the State of Oklahoma would be much greater than 1,362,000 barrels per day and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this state and otherwise cause waste of a character prohibited by the laws of the State of Okla-

homa," and that "In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools" described in the petition "during the said months of July, August and September, 1930," according to a schedule therein set forth by which the Oklahoma City field was restricted to a production of 130,037 barrels per day out of a 600,000-barrel per day potential; that by the decretal part of the said order the oil production was limited to an average of 650,000 barrels per day during July, August and September, and the Oklahoma City field was not allowed to produce a maximum of more than 25 per cent of its potential production; that the Greater Seminole field was limited to two-thirds of its potential production during said months, the East Earlsboro and South Earlsboro pools were limited to one-third of their potential production, and three other designated pools limited to one-fourth of their potential production during said months, and the Commission by its said order expressly retained jurisdiction to make supplementary and ancillary orders from time to time as required by new developments "and as instructions to [fol. 25] the Umpire and Operators' Committee" and authorized the Umpire and Operators' Committee to report the facts to support any supplemental or ancillary order.

XV

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendants, the Corporation Commission of the State of Oklahoma, as then constituted, made and entered on August 30th, 1930, an order, No. 5292, in Corporation Commission cause No. 10146, the effect of which, if valid, was to further restrict and curtail the production of crude oil in the Oklahoma City field, the Greater Seminole oil field, and other oil fields in Oklahoma in which the plaintiff then owned and now owns and operates oil producing wells, a copy of which order is hereto attached and made a part hereof as Exhibit "B"; that in said order the Commission found as a fact that the potential production of crude oil in Oklahoma had then increased to 1,481,118 barrels per day and that the reasonable market demand had decreased from 650,000 barrels to 550,000 barrels per day since June 30th, and that it was necessary to further curtail the output of crude petroleum in Oklahoma; found

that the potential production in the Oklahoma City field was 700,000 barrels per day and curtailed the production of crude oil in that field from 130,037 barrels per day to 88,903 barrels per day, and in said order prohibited the production of oil in the Greater Seminole field in excess of 50 per cent of the potential production, cut the production in some fields to one-fourth of the potential and the Oklahoma City field to 18¾ths per cent of its potential during the month of September, but did not undertake to curtail the production in smaller fields having a production of 260,000 barrels per day, and in said order retained jurisdiction to make supplemental and ancillary orders from time to time as required by new developments and as recommended by the Umpire and Operators' Committee upon their report of facts showing the necessity thereof, and thereby modified its former order shown by Exhibit "A" hereto attached.

[fol. 26]

XVI

That the defendants, the Corporation Commission of the State of Oklahoma, as then constituted, made, entered and promulgated said orders shown by Exhibits "A" and "B" hereto attached without having heard the testimony of any witness under oath and without having heard and considered any sort of legal evidence upon which to base either of said orders; that without any legal evidence of any sort before it said defendants, acting as the Corporation Commission of Oklahoma, did on September 30th, 1930, make and enter order No. 5337 in said Corporation Commission cause No. 10146, extending orders Nos. 5189 and 5292 in full force and effect until and including October 10th, 1930, as shown by Exhibit "C" attached hereto.

XVII

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendant, the Corporation Commission of the State of Oklahoma as then constituted, made and entered on October 28th, 1930, an order, No. 5369, in Corporation Commission cause No. 10146, the effect of which, if valid, was to further restrict and curtail the production of crude oil in wells producing over 5 barrels per day in all fields in the State of Oklahoma, in-

cluding the Oklahoma City and Greater Seminole fields, a copy of which order is hereto attached and made a part hereof as Exhibit "D"; that in said order defendants found that the potential daily production of crude oil from the wells in Oklahoma during the month of October, 1930, is and will be approximately 3,638,478 barrels and that during the months of November and December, 1930, the said potential daily production will be 4,142,872 barrels and 4,244,294 barrels respectively, and that the daily demand for crude oil from Oklahoma is and will be approximately 550,000 barrels in October, 545,000 barrels in November, and 535,000 barrels in December, 1930"; that said order contained a "proration schedule" for the period between October 1st and December 21st, 1930, in which it is found and ordered that the Oklahoma City field for October had a potential production of 2,200,000 barrels, of which [fol. 27] amount it was restricted to a daily production of 131,095 barrels, for November a potential production of 3,319,000 barrels with production restricted to 134,589 barrels per day, and for December a potential daily production of 3,446,000 barrels with an allowed production per day of 131,003 barrels; that jurisdiction over the cause was expressly retained by the Commission.

XVIII

That assuming that said "Oil Conservation Act" was valid and constitutional legislation and that it vested them with authority to do so, the defendants, the Corporation Commission of the State of Oklahoma as then constituted, made and entered on December 30, 1930, an order known as order No. 5414 in Corporation Commission cause No. 10,326, prescribing the method of gauging the wells in the Oklahoma City oil field, a copy of which order is hereto attached, marked Exhibit "E" and made a part hereof.

XIX

That on February 10th, 1931, the Corporation Commission of Oklahoma made and entered an order known as order No. 5437, in Corporation Commission cause No. 10,326, in which order it was purported to be found that

the market demand from the Oklahoma City field had increased, and by which order the allowed production from the Oklahoma City field was increased to 125,000 barrels per day, a copy of which order is hereto attached, marked Exhibit "F" and made a part hereof; that the Corporation Commission, on the 4th day of March, 1931, made a verbal announcement that an order would be made and entered, by which the defendant Corporation Commission of Oklahoma would find that the market demands from the Oklahoma City field has increased to 150,000 barrels per day, and by which order the allowed production from said field would be increased to 150,000 barrels per day; that immediately following said announcement, the Stanolind Crude Oil Purchasing Company reduced its price for oil purchased from the State of Oklahoma from $1.97 to $.67 per barrel for 40 gravity oil and above, with corresponding decreases for lower grades of oil; that upon the publication of said price cut, the defendant Corporation Commission of Oklahoma, on March 5th, 1931, at the writ- [fol. 28] ten request of the Governor of the State of Oklahoma, made and entered an order, known as journal entry No. 1856, by which it rescinded the verbal order herein referred to and decreased the allowed production from the Oklahoma City field to 125,000 barrels per day, a copy of which journal entry is hereto attached, marked Exhibit "G" and made a part hereof; and that on April 17, 1931, the Corporation Commission made and entered an order known as order No. 5468 in Corporation Commission cause No. 10326, a copy of which is hereto attached marked Exhibit "H" and made a part hereof; and that on May 28, 1931, the Corporation Commission made and entered an order known as order No. 5486 in Corporation Commission cause No. 10326, a copy of which is hereto attached, marked Exhibit "I" and made a part hereof.

XIX-a

That on June 27, 1931, the Corporation Commission made and entered Order No. 5548, in Commission case No. 10326, a copy of which is hereto attached and made a part hereof as Exhibit "M", and did thereafter on June 29th, 1931, make and enter a further order, No. 5549, in the same cause, a copy of which is hereto attached and made a part hereof as Exhibit "N".

XX

That in its order of June 30th, 1930, shown by Exhibit "A" hereto, Ray M. Collins was appointed by the Oklahoma Corporation Commission as its umpire and agent "to enforce the rules and regulations" therein made, and was authorized to employ assistants to aid him in administering the rules and regulations; that the said appointment has been continued in the later orders herein mentioned and the said Ray M. Collins is now and has been for many months prior hereto the umpire for the defendants, purporting to act as the agent and representative of the Corporation Commission of Oklahoma, whereas in fact said Collins is not now and never has been a legal agent of the Corporation Commission and is not now and never has been an officer of the State of Oklahoma with any authority to act in respect to the matters covered by the said Act of Legislature approved February 11th, 1915, or the rules and regulations made thereunder by the Cor- [fol. 29] poration Commission; that in its said order No. 5369, shown by Exhibit "D" hereto attached, the defendants again appointed Ray M. Collins as "umpire and agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary;" that as a fact said Ray M. Collins is now and has been at all times while acting under purported authority from the Corporation Commission of Oklahoma the paid employee and representative of numerous persons, firms and corporations producing oil in the various Oklahoma fields and engaged in the manufacture of refined products and marketing the same in competition with complainant; that said Ray M. Collins, for his services in acting as the appointed agent and umpire of the Corporation Commission, is now and has been receiving a monthly salary at the rate of $24,000.00 per year from various firms, persons and corporations engaged in the production of crude oil in Oklahoma and the refining of crude oil in competition with complainant; that said Collins has neither been paid nor promised by the State of Oklahoma or any political subdivision thereof any compensation for his services as alleged umpire and agent of the said Commission; that said Collins has at all times acted in conjunction

with and in the service of a so-called Operators' Committee composed of various individuals producing oil in Oklahoma and representatives of firms and corporations producing crude oil in Oklahoma fields and manufacturing the refined products therefrom and marketing the same.

XXI

That the Commission's order No. 5189, made on June 30th, 1930, provides that:

"The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the umpire and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby, the umpire shall appoint a representative of an operator owning a lease adjoining the par-
[fol. 30] ticular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom, and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken."

That in its said order No. 5369, made on October 28th, 1930, it is provided that:

"The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the umpire shall appoint a representative of an operator owning a

lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken."

[fol. 31]

XXII

That the oil wells in the Oklahoma City field have never been gauged by the Oklahoma Corporation Commission or by any competent and legally qualified agent of said Commission or legal and qualified officer of the State of Oklahoma; that the Commission's findings of the potential production in the Oklahoma City field, set forth in the various orders hereto attached as exhibits, were not based upon any gauge of the wells in said field; that the Commission's findings of the potential production in the Seminole field and other fields, set forth in said orders, were not based upon any gauge of the wells in said respective fields; that no legal and lawful gauge as provided by the Oklahoma statutes has ever been made by said Corporation Commission or under any valid rules prescribed by said Commission; that the Governor of the State of Oklahoma has never consented to the employment or appointment of agents to make the gauge, as required by section 7958, O. C. L. 1921.

XXIII

That various persons, firms and corporations owning and operating oil wells in the Oklahoma City field, Greater Seminole field and some of the other fields, organized what is known and referred to in the Commission's rules, regulations and orders herein complained of as an "Operators' Committee"; that said Operators' Committee is composed of plaintiff's competitors; that said Operators' Committee procured the Corporation Commission to name

one of their employees, Otto B. Bradford, as a so-called umpire for the Oklahoma City oil field; that acting under the directions of the Operators' Committee, approved by the Corporation Commission, it was the business of Otto B. Bradford, as alleged umpire, to see that the producers of oil in the Oklahoma City field kept their wells closed down on said proration basis and production allowed upon an unfounded and unwarranted estimation of the potential production of the Oklahoma City field; that said Otto B. Bradford is not and never has been an agent or representative of the State of Oklahoma or a political subdivision. [fol. 32] thereof; that he has neither received nor been promised by the State of Oklahoma or any authorized agent of the State of Oklahoma or political subdivision thereof, any compensation for his service as alleged umpire; that said Bradford has been receiving from the Operators' Committee compensation for his services and all his acts and deeds have been illegal and unauthorized by any valid rule and regulation of the Commission or by the provisions of any statute of the state.

XXIV

That neither the Conservation Act nor the rules, regulations and orders of the Corporation Commission requires nor provides or provided for notice of time and place to plaintiff or to any other operators in the Oklahoma field of a pretended gauge or any effort to gauge the wells of the other operators; that no provision is made in said Conservation Act nor in the rules and regulations of the Commission for notice to the owners of oil wells in the Seminole field that at a certain time and place a gauge will be made of the production of oil in wells in the Oklahoma City field and no provision is made by said Conservation Act or the Commission's rules and regulations for notice to the plaintiff of the time and place of any gauge of the oil produced from wells in the Oklahoma City field other than wells on its own leases or wells on leases or lands adjoining its leases in the Oklahoma City field; that it never received any notice of the time and place of gauging the production of oil from wells of other operators in the Oklahoma City field, or in the Seminole field, or the East or South Earlsboro fields, or in other fields described in the Commission's rules and regulations, subjecting them to its proration orders, that although

the Commission's order, rules and regulations herein complained of condition plaintiff's right to produce the full capacity of its wells upon the potential production of the wells of other owners in the Oklahoma City field, Greater Seminole field, and other prorated fields, neither the Conservation Act nor the rules and regulations of the Commission provide for any notice to plaintiff or to any other operator of the time and place of making gauges to determine the potential production, and no notice having been [fol. 33] provided for by said Conservation Act or the Commission's rules and regulations, and no notice of any intended gauge having been served upon it, the rules, regulations and orders of the Commission herein complained of are each and all void in that they deny plaintiff due process of law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States; that the Commission's rules and regulations providing for a gauge of the wells undertakes to vest final and conclusive authority in the various and sundry owners of oil wells in said Oklahoma fields to determine, in the presence and with the consent of an adjoining operator, the amount of the potential production of the well gauged, and in undertaking to vest private owners with that authority the rules constitute an unconstitutional interference with the plaintiff's use of its property, deny plaintiff due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and likewise deny it equal protection of the law guaranteed by said amendment.

XXV

That it now has and has had at all times and will continue to have facilities for the transportation of its crude oil from its said leases in the Oklahoma City field, Greater Seminole field, and other fields to its Enid refinery and a market for its refined products; that neither it nor any other operator in the Oklahoma City field has produced and stored crude oil in earthen tankage or permitted it to run at large on the surface of the earth; that it is not now and has not at any time wasted any of the oil produced by it from its leases in said fields and that all the oil it can produce will be utilized for commercial purposes; that its oil wells are now and have been since completion equipped in the most modern and efficient manner for the production of oil; that

the closing in or pinching in of plaintiff's wells in said Oklahoma City field will cause water to enter the oil and gas sand, greatly damage said wells and result in material waste of oil and gas to its irreparable damage.

XXVI

That said Commission's rules, regulations and orders [fol. 34] herein complained of are arbitrary and discriminatory in that they allow oil producers in certain sections of the state to produce their wells to 100 per cent of their capacity, whereas the producers in other areas are restricted to much lower percentages and the producers in the Oklahoma City field are restricted to 2 per cent of the capacity of their wells; that it has been required and compelled by defendants to shut entirely in its wells in the Oklahoma City field and limit its production from its Greater Seminole field wells to a minimum, thus compelling it to purchase oil from other producers in order to run its refinery although it has sufficient production of its own to keep its refinery running at full capacity; that it can produce oil from its wells in the Oklahoma City and Greater Seminole fields and other fields for a less cost than the price it is now and will be compelled to pay for crude oil from other producers on the open market; that said rules, regulations and orders thereby deny it due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States; that under present conditions and conditions existing for several months prior hereto it has been compelled to run its refinery at a loss, whereas if it is allowed to produce and refine its own production in said Oklahoma fields it can run its refinery at a profit or at least without a loss; that its refinery is equipped with the most modern and efficient stills, machinery and apparatus for the refining of crude oil into gasoline and other by-products.

That the rules, regulations and orders of said Commission, as hereinbefore set forth, are unconstitutional and void in that said orders as entered have the effect of confiscating the property of this plaintiff and for the further reason that they are in contravention of the provisions of section 2 of article 2 of the Constitution of Oklahoma, which is as follows:

"All persons have the inherent right to life, liberty, and pursuit of happiness and enjoyment of the gains of their own industry",

in that this plaintiff has rendered its property highly valuable by its own industry, and it is capable of taking there- [fol. 35] from without waste, oil in large quantities as herein otherwise set out, of which it is now deprived by said orders.

Plaintiff further alleges that the rules, regulations and orders of said Commission as heretofore set forth are unconstitutional and void under the 14th Amendment to the National Constitution in that said orders, without regard to the fact that the oil as produced in the Oklahoma City area is produced from four separate and totally distinct oil bearing sands in different geological structures, neither of which can drain the other, and one of which sands produces and will produce far more oil than the others, nevertheless the orders of said Commission treat all said sands as one common pool and thus arbitrarily discriminate against the producers, including plaintiff, having wells in the most productive of said sands, and at the same time and by these said orders the Commission allows a different percentage of production in different oil fields in Oklahoma, many miles apart and equally as incapable of draining each other as the four different oil producing sands in the Oklahoma City field are incapable of draining each other, and by these rules and regulations the Commission is and has been prorating markets in Oklahoma in an arbitrary and unreasonable manner and thus denying plaintiff the equal protection of the law as granted by the 14th Amendment to the National Constitution.

XXVII

That said rules, regulations and orders of the Commission prohibiting pipelines from running and purchasers from buying more oil from any producer than allowed by the rules, regulations and orders are void for the want of any authority to prescribe them and are intended to and actually have the effect of coercing purchasers and pipelines into submission thereto and thereby depriving plaintiff of the means of transporting its oil.

XXVIII

That many large oil corporations, firms and individuals selfishly interested in maintaining high prices for crude oil formed by agreement among themselves what is known in the rules and regulations of the Commission as an "Oper-
[fol. 36] ators' Committee" and through Ray M. Collins, said operators, competitors of the plaintiff, formulated their so-called proration orders herein complained of and submitted them to the Corporation Commission for approval; that the Commission approved and adopted said suggested rules, regulations and proration orders without sufficient appropriate or competent evidence, legally or properly to justify the entry of said orders; that said major oil companies, competitors of plaintiff, entered into an agreement, combination and confederation among themselves to limit the natural output of wells in the Oklahoma City field, Greater Seminole field, and other fields in Oklahoma and the United States, and thereby restrict production for the purpose of controlling the price of crude oil and its refined products and eliminating thereby plaintiff and others in its class as competitors, and said agreements were and are in restraint of trade and commerce among the several states and in violation of the anti-trust laws of the United States and the State of Oklahoma, "and proration orders of the Corporation Commission are a violation of section eight of article one of the Constitution of the United States."

XXIX

That C. C. Julian Oil and Royalties Company, a corporation, did on August 28th, 1930, file a petition in the Supreme Court of the State of Oklahoma wherein it alleged that it was the owner of oil and gas leases in the Oklahoma oil fields and had at that time and for some time prior thereto producing oil wells on its leases in said field and on other and additional allegations prayed the court to issue a writ of prohibition directed to the defendants and the Corporation Commission of the State of Oklahoma restraining it from enforcing its rules, regulations and proration orders set forth in Exhibit "A" to this bill; that the Supreme Court issued a temporary writ of prohibition but on motion of the Attorney General of the State vacated the temporary

writ, retaining, however, jurisdiction of the petition for the writ for decision on its merits; that thereafter and on October 14th, 1930, the court decided the cause and entered a judgment dismissing the petition for the writ of prohibition, holding thereby that the Conservation Act of the Legis- [fol. 37] lature conferred jurisdiction and authority upon the Corporation Commission to do the things complained of by the petitioner in that case.

XXX

Plaintiff alleges that the Oil Conservation Act and the separate sections thereof are unconstitutional and void for the following reasons and under the provisions of the Fourteenth Amendment to the Constitution of the United States, in that:

(a) Said act deprives plaintiff of the use of its property.

(b) Said act deprives the plaintiff of the equal protection of the laws.

(c) Said act denies the plaintiff due process of law.

(d) Said act undertakes to control and fix prices at which Plaintiff must sell or purchase crude oil.

(e) The provisions of said act are too vague and uncertain intelligently to forewarn the plaintiff and others in its class of the rule or law it must abide by in the conduct of its business.

(f) That said act is void for uncertainty and vagueness in that it does not define what is meant by (1) "Economic waste"; (2) "waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand"; (3) "inequitable or unfair taking from a common source of supply"; (4) "unreasonable discrimination in favor of any one such common source of supply as against another."

(g) Said act is an arbitrary and unreasonable limitation on the right of plaintiff and others in its class to produce oil from its own private property and market the same at whatever price it chooses to accept therefor.

(h) Said act undertakes to limit and confine plaintiff to a taking of crude oil from the ground except in such man-

ner and on such terms as the Corporation Commission of the State of Oklahoma deems in advance of the taking is equitable and fair.

(i) Said act limits the plaintiff in the taking of crude [fol. 38] oil from its wells to an amount based on the ratio and proportion of the potential production of its wells to the potential production of all the wells in the so-called common source without in any way first defining the limitations and boundaries of the common source.

(j) Said act does not define the manner in which the extent of such common source of supply shall be ascertained or designated.

XXXI

That said Conservation Act is void in that it violates section 1 of article 4 of the Oklahoma Constitution in that it attempts to delegate to the Corporation Commission power and authority to prescribe by legislative rule the future conduct of operators of oil and gas wells in Oklahoma by preventing each from taking from a common underground reservoir of crude oil an inequitable and unfair proportion thereof; that it further violates section 1 of article 4 of the Constitution in that it confers and delegates legislative, executive and judicial authority upon the Corporation Commission.

XXXII

That it is void in that it violates section 1 of article 5 of the Oklahoma Constitution which confines all the legislative authority of the State of Oklahoma to the Legislature consisting of a Senate and House of Representatives, reserving to the people only "the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature," and also reserving "power at their own option to approve or reject at the polls any act of the Legislature."

XXXIII

That the Commission's rules, regulations and orders herein complained of being based upon the findings of fact therein recited, are void in that they were made and are

maintained with threats of their enforcement in excess of the Commission's authority and powers either granted by the Constitution of Oklahoma or any statute of the state; that said Rules, regulations and orders of the Commission are void in that they undertake to regulate, control and un- [fol. 39] reasonably hamper plaintiff's business of refining oil and marketing the refined products therefrom in violation of plaintiff's rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XXXIV

That the defendants, Hughes, Childers and Walker, as the Corporation Commission of the State of Oklahoma, are threatening to continue to make and enforce from time to time for an indefinite period its present rules regulations and orders, thereby depriving plaintiff of its rights guaranteed by the Constitution of the United States; that the aforesaid defendants, acting as the Corporation Commission of the State of Oklahoma, intend to and will make said rules, regulations and orders for a brief period of time and then shortly before the expiration thereof continue them, all for the purpose of preventing this plaintiff from presenting to this court and to the Supreme Court of the United States the issue of the validity of said rules, regulations and orders and their constitutionality and the constitutionality of the Oklahoma Oil Conservation Act; that this course of conduct has been maintained by the aforesaid defendants from month to month from June, 1930, and will hereafter be continued from month to month or for brief periods for the purpose of coercing this plaintiff and others similarly situated into an acceptance and acquiescence in their orders, rules and regulations and with the hope that this suit or any other action commenced in the Federal Court will become moot before a trial and decision can be had.

That subsequent to February 9, 1931, plaintiff, by reason of its refinery's imperative need of crude oil, which could only be supplied at reasonable cost from its own wells, and by reason of such necessity and in order that its interstate business thereby through 15 years of frugal management would not be by its competitors' self-imposed authority destroyed, and an unjust burden placed on it, produced

approximately 300,000 barrels of crude oil from its wells in the Oklahoma City field in excess of the amount which it would have been entitled to produce if the Curtailment [fol. 40] Act of 1915 and the Commission's orders herein referred to are valid. That the penalties prescribed by the Oklahoma statutes herein pointed out for violation of the orders of the Corporation Commission are void as to this plaintiff in that if said sections are imposed against this plaintiff, it will be deprived of its property without due process of law and will be denied the equal protection of the law, in contravention of the Fourteenth Amendment to the Constitution of the United States; that the penalties prescribed are so drastic that no owner of oil producing properties in the State of Oklahoma could invoke the jurisdiction of any court to test the validity of the act approved by the Oklahoma legislature on February 11th, 1915, and the orders, rules and regulations of the Corporation Commission made and entered in pursuance thereto as hereinbefore alleged except at the risk of the confiscation of his or its properties and the incurring of the payment of large sums of money by way of fines and penalties and the imprisonment of such owner and its officers, agents and employees in jail or prison for long terms; that section 9 of the Act of the Oklahoma Legislature approved February 11th, 1915, being 7962, C. O. S. 1921, irrespective of the validity of the other provisions of the act is void in that it deprives the plaintiff of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States and of section seven of article 2 of the Constitution of the State of Oklahoma, and in that it constitutes an unusual punishment in contravention of section nine of article 2 of the Constitution of the State of Oklahoma, and in that it constitutes a bill of attainder in violation of section fifteen of article 2 of the Constitution of the State of Oklahoma.

That the plaintiff instituted this action and is now prosecuting the same with due diligence, and prayed and perfected its appeal from the order of this court entered on February 9th, 1931, denying its application for a temporary injunction to the Supreme Court of the United States, and is now prosecuting said appeal in that court with due diligence, in good faith and in the honest belief that said Act

of the Oklahoma Legislature approved February 11th, [fol. 41] 1915, and the orders, rules and regulations made pursuant thereto, as hereinbefore stated, are void for the reasons herein and in the second amended and supplemental bill stated.

That notwithstanding the fact that this plaintiff is, and at all times since the filing of this cause has been, in good faith testing the constitutionality of said act passed by the Oklahoma legislature, and approved on February 11th, 1915, and the validity of the orders, rules and regulations of the Corporation Commission made and entered pursuant thereto, as hereinbefore set forth, the defendant, the Corporation Commission of the State of Oklahoma, and the defendants Paul Walker, E. R. Hughes and C. C. Childers, as members thereof, acting by and through J. Berry King, Attorney General of the State of Oklahoma, did on the 28th day of May, 1931, file a petition in the District Court in and for Oklahoma County, State of Oklahoma, in a cause entitled State of Oklahoma ex Rel. J. Berry King, Attorney General, versus Champlin Refining Company, being cause No. 68950 of the causes pending in said court, wherein it is prayed that the court appoint a receiver to take possession of the producing properties of the plaintiff herein, located in the Oklahoma City oil field upon the lands hereinbefore described, alleging as cause therefor that this plaintiff has violated the provisions of the Act of the Oklahoma Legislature approved February 11th, 1915, and/or the orders, rules and regulations made and entered pursuant thereto as hereinbefore alleged, and that it is threatening to continue to violate the provisions of said act and said orders, rules and regulations, and alleging that by reason of the provisions of section 9 of the Oklahoma Legislature, approved February 11th, 1915, a receiver should be appointed; that the application for such appointment of such receiver was set for hearing in said court for the 5th day of June, 1931, that in said cause pending in the District Court of Oklahoma County, Oklahoma, the defendant J. Berry King at that time caused an order to be entered and served upon this plaintiff enjoining it from operating its wells located upon said lands, pending the hearing of the application for the appointment of a receiver, a copy of said order is hereto attached, marked Exhibit "J" and made a part hereof;

[fol. 42] That thereafter, this plaintiff exhibited in this court its amendment to its second amended and supplemental bill of complaint, wherein it prayed that the above described receivership action be dissolved and that the said J. Berry King and the said Louis R. Morris be enjoined from bringing in such further action against this plaintiff during the period in which this plaintiff should be testing the constitutionality of the above described conservation law; that on the 13th day of June, 1931, this honorable court made and entered an order restraining the defendants Paul Walker, E. R. Hughes and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and the defendants Louis R. Morris and J. Berry King, from instituting any proceedings against this plaintiff under any of the penalty provisions of the above described oil conservation law, and further ordering the said J. Berry King to dissolve the restraining order in the receivership suit hereinabove described; a copy of said order is hereto attached marked Exhibit "K" and made a part hereof, and bond in accordance with said order is shown by Exhibit "L" hereto attached.

Plaintiff further alleges that a period of approximately one year will necessarily elapse from the 9th day of February, 1931, to the date of the determination of plaintiff's appeal from the order of February 9th, 1931, denying to it a temporary injunction as prayed for, and a much longer period of time from February 9th, 1931, to the date of the final determination of this cause will elapse; that during said time if plaintiff should comply with the provisions of the Act of the Oklahoma Legislature approved February 11th, 1915, and with the orders, rules and regulations of the Corporation Commission made and entered pursuant thereto as hereinbefore alleged and the act and/or the said orders, rules and regulations are finally determined to be void, it will have suffered great and irreparable injury by reason of its compliance therewith, and will have been deprived of its property and the use thereof without remedy against the State of Oklahoma or the Corporation Commission of Oklahoma or the defendants J. Berry King, Lewis R. Morris, Paul Walker, E. R. Hughes and C. C. [fol. 43] Childers; that the plaintiff has a constitutional right to test the constitutionality of said act and the valid-

ity of said orders, rules and regulations without restriction or hindrance; that if it adopts the alternative course of action, to-wit, to ignore said act and said orders, rules and regulations in assertion of its legal rights afforded to it by the Fourteenth Amendment to the Constitution of the United States, it must do so at the risk of incurring the burdensome and enormous penalties hereinbefore set out and will be constrained to forego its constitutional right to test the validity of said act and/or said orders, rules and regulations.

That the institution of proceedings either before the Corporation Commission under the provisions of section 3498 and section 3499, Compiled Oklahoma Statutes, 1921, or under the provisions of sections 8 and 9 of the Act of the Oklahoma legislature approved February 11th, 1915, or other proceedings will destroy plaintiff's financial credit and embarrass it in the operation of its business, to its great loss, and will otherwise work irreparable injury to the plaintiff; that the plaintiff has no adequate remedy at law, and is therefore entitled to relief in equity.

XXXV

That since the filing of the original bill in this cause plaintiff did on November 7th, 1930, file with the Corporation Commission of the State of Oklahoma its written special appearance and motion to vacate its rules, regulations and orders herein complained of, in which motion it stated that this suit was commenced in this court "about September 15th, 1930, for the purpose of restraining and enjoining the enforcement of said rules, regulations and orders herein complained of" and further set forth substantially all the facts and allegations herein contained, and prayed "the said proration order of October 28th, 1930, in cause No. 10326, and all other prior proration orders affecting this movent, be set aside and annulled at least in so far as movent is concerned; if this relief will not be granted then movent prays that the Commission enter an order suspend-
[fol. 44] ing the application of the penalty provisions of the statute during the pendency of its action in equity in the United States Court for the Western District of Oklahoma wherein it seeks to restrain and enjoin this Commission from enforcing said proration orders"; that said mo-

tion to vacate was set for hearing before the Commission on November 20th, 1930, at the offices of the Commission in the Capitol Building at Oklahoma City, Oklahoma; that on said date plaintiff appeared with its counsel and witnesses and those operators opposed to the motion appeared through their representatives and counsel, whereupon evidence was introduced and heard and on the morning of November 21st, 1930, the Commission denied plaintiff's said motion to vacate and entered an order denying plaintiff's motion to vacate and its motion to stay or suspend the enforcement of the orders, rules and regulations herein complained of pending a trial and final decision of this case in this court.

XXXVI

That the Corporation Commission of the State of Oklahoma is the only tribunal provided by the laws of said state endowed with final legislative authority on the subjects herein complained of; that the Oklahoma Supreme Court on appeal from said rules, regulations and orders herein complained of, has no authority to review said orders, rules and regulations and substitute therefor its own orders, rules and regulations, said court being confined exclusively to the determination of any and all judicial questions arising in respect to the validity and enforcement of said rules, regulations and orders; that plaintiff has no adequate remedy at law and is therefore entitled to relief in equity.

XXXVII

That on the 22nd day of April, 1931, the plaintiff filed in this court its petition for an allowance of an appeal to the Supreme Court of the United States from the order of February 9th, 1931, denying its application for a temporary injunction as prayed for, together with its assignments of error and bond on appeal, and that on that date the prayer for the allowance of an appeal was allowed, and [fol. 45] the bond on appeal approved; that said appeal has been duly perfected and is now duly lodged in the Supreme Court of the United States where the same is now pending for the decision of that court.

Wherefore plaintiff prays (1) that this court enter a temporary restraining order restraining the defendants

Hughes, Walker and Childers individually and in their official capacity from enforcing said orders, rules and regulations herein complained of, and that a temporary injunction be granted by a three-judge court as provided by section 266 of the Federal Judicial Code; (2) that said Oil Conservation Act be declared unconstitutional and void; (3) that if the relief prayed for in the second paragraph of this prayer cannot be granted, then that this court adjudge the rules, regulations and orders of the Commission herein complained of unconstitutional and void; (4) that the defendants, and each of them, and their successors in office, their agents, servants, employees and successors, and all persons acting under or through them, be temporarily and then permanently enjoined in any way or manner, by reason of the apparent force of said orders, from enforcing said purported orders, rules and regulations, or any part thereof, against this plaintiff, and enjoined temporarily and permanently from making, promulgating and enforcing any similar rules, regulations and orders; (5) that the statutes of Oklahoma prescribing the penalties for the violation of the rules, regulations and orders of the Corporation Commission and the Conservation Act be adjudged unconstitutional in that they deprive the plaintiff of due process of law, and that the defendants be temporarily and permanently enjoined from imposing upon this plaintiff any of the statutory penalties for the violation of said orders, rules and regulations; that the Corporation Commission and the defendants Paul Walker, E. R. Hughes and C. C. Childers and all persons acting by, through or under them, be temporarily and permanently enjoined from instituting proceedings against this plaintiff under the provisions of sections 3498 and 3499, Compiled Oklahoma Statutes, 1921, and from causing proceedings to be instituted against this plaintiff under the provisions of sections 8 and 9 of the Act approved February 11th, 1915, [fol. 46] and from causing any other proceedings criminal in their nature to be instituted against the plaintiff, its agents, servants and employees, in connection with the filing of reports as to the amount of oil produced in the Oklahoma City field since the 9th day of February, 1931, and that pending the hearing upon the application for a temporary injunction a temporary restraining order be forthwith issued restraining said defendants from proceeding

under said sections 3498 and 3499, Compiled Oklahoma Statutes, 1921, or causing any other proceeding to be instituted on account of alleged violations of the Act of the Oklahoma legislature approved February 11th, 1915, and the orders, rules and regulations made in pursuance thereto; that the defendant J. Berry King and the defendant Lewis R. Morris, and all persons acting by, through or under them or either of them, be temporarily and permanently enjoined from instituting proceedings against this plaintiff pursuant to section 8 of the Act of the Oklahoma Legislature approved February 11th, 1915, and from instituting receivership proceedings under the provisions of section 9 of that act, and from instituting any proceedings criminal in their nature against the plaintiff, its agents, servants and employees in connection with the filing of reports as to the amount of oil produced in the Oklahoma City field since the 9th day of February, 1931, and that pending the hearing upon the application for a temporary injunction they and each of them be forthwith temporarily restrained from instituting any of such proceedings; that the defendant J. Berry King be temporarily and permanently enjoined from prosecuting the application for a receivership in the cause entitled State of Oklahoma, ex rel. J. Berry King, Attorney General; v. Champlin Refining Company, now pending in the District Court in and for Oklahoma County, being cause number — of the causes pending in said court, and from prosecuting all incidental proceedings connected therewith, and that he be ordered to dissolve the temporary injunction heretofore issued in said cause against this plaintiff, [fol. 47] the Champlin Refining Company; (6) that plaintiff have all such other, further and general relief as it may be entitled to under the premises and the facts.

Horace G. McKeever, Harry O. Glasser, Edgar A. deMeules, Geo. S. Ramsey, Attorneys for Plaintiff. McKeever, Elam & Stewart, Ramsey, de Meules, Martin & Logan, of Counsel.

Duly sworn to by H. H. Champlin. Jurat omitted in printing.

Exhibits not here reprinted, being included in their entirety in the Volume of Exhibits.

[File endorsement omitted.]

[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS TO THIRD AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed July 3, 1931

Come now the defendants and for their answer to the plaintiff's third amended and supplemental bill of complaint, hereinafter referred to as "bill of complaint", allege and state:

1. The defendants admit the allegations of paragraphs numbered I, II, III, IV and V of said bill of complaint.

2. Defendants admit that plaintiff is the owner and holder of oil and gas leases on the lands particularly described in paragraph VI of said bill of complaint, but deny that plaintiff has owned or held said leases at all times mentioned in said bill, and allege that plaintiff did not acquire its said leases or the several tracts or parcels of land described in said paragraph VI which are located in the Oklahoma City field until long after said field was discovered in December, 1928, and that it acquired its first lease therein in the Spring of the year 1930, [fol. 49] at a time when, and long after said field was placed under proration by the orders of the defendant Corporation Commission, which proration originated in October, 1929. They admit that plaintiff has drilled wells on said tracts of land as alleged in paragraphs VI and VII of said bill, but are without knowledge that said wells are of the potential capacities alleged by plaintiff.

3. Defendants allege that the described lots located in the Oklahoma City field in Oklahoma County covered by leases belonging to plaintiff, are in several separate small lots or tracts or parcels of land and that Lots 30 to 35 inclusive, in Block 2, Roosevelt Place Addition to Oklahoma City, upon which one of plaintiff's large wells is located, constitute one tract of land, and contain .48 of one acre of land; that lots 50 to 51 in said Block 2 constitute another separate tract of land containing .16 of one acre of land; and that Lots 23 to 26, inclusive, in Block 9, Armourdale Addition to Oklahoma City, upon which another of plaintiff's Oklahoma City field wells is

located, constitute a third and separate tract of land containing .31 of an acre of land; and they state that said three tracts of land and the other nine tracts covered by plaintiff's Oklahoma City field leases are not contiguous and that they are surrounded by other lands upon which companies and individuals other than plaintiff have and own oil and gas leases and upon which said other companies and individuals have and own oil and gas wells producing from the same common source of supply from which plaintiff's wells are producing. They allege that in said field producing wells of large capacities, drilled into [fol. 50] the producing horizon in which plaintiff's wells in said field obtain production, have been drilled by others owning leases on land surrounding and in the general vicinity of the lands leased to plaintiff.

4. Defendants further allege that the present developed area in the Oklahoma City field comprises about 8,000 acres of land and that there have been drilled therein approximately 800 wells, productive of oil in large quantities; that a comparatively small portion of said field, on the north and northwest, wherein plaintiff's said wells are located, called the "Town Lot" portion thereof, covers several laid out and platted additions to Oklahoma City, some within and other- adjoining the southeastern corporate limits of said city, but that by far the greater portion of said field lies south and southeast of said "Town Lot" portion of said field, extending a distance of several miles; and that the wells drilled in that portion of said field, other than the "town lot" portion thereof, are located, generally speaking, and as is customary, one well to each ten acres of land, but that within said corporate limits and said additions, wells are usually located and drilled on less than ten acre tracts; and that the wells on the lands surrounding plaintiff's leased lands are as a rule drilled upon larger tracts of land than the tracts covered by plaintiff's said drilled leased acreage. They allege that if the plaintiff be not limited as provided by the Oil Conservation Act of Oklahoma in the operation of its wells, it will be able to and will under the circumstances, extract far more than its fair share of said oil [fol. 51] and waste and dissipate excessive quantities of gas energy and cause great underground waste of oil, and

the injury to many other producers in said field will be far greater than the injury, if any will at all accrue, to the plaintiff if required to obey said Act, and the policy of the State of Oklahoma to conserve its oil and gas resources will be defeated.

Defendants further allege that the discovery well in the Oklahoma City field was completed in December, 1928, and that said field thereafter very rapidly developed by the completion from time to time of additional wells therein, and that said field was first placed under proration by an order of the defendant corporation Commission, effective October 15, 1929, and that said field has been operated under proration orders of the Commission ever since said date, and they allege that the plaintiff acquired its said leases in said field after October 15, 1929, with a knowledge of the fact that the potential production of said field greatly exceeded the reasonable market demands for production from said field and that if waste therein was to be prevented and ratable taking enforced, proration orders of the defendant Commission would necessarily have to be made and enforced; and that plaintiff drilled its first two wells in said field in the Summer and Fall of 1930 with a full knowledge of the then existence of proration orders issued by said Commission affecting all the wells then in said field and such as should be later drilled therein. They further allege that plaintiff built its pipe line, alleged in its bill of complaint to have been constructed, whereby it has a pipe line connection between its wells in said field and its refinery at Enid, Oklahoma, after the completion of its first producing [fol. 52] well in said field *and its refinery at Enid, Oklahoma, after the completion of its first producing well in said field*, and completed said pipe line on or about September 10, 1930, and did so with a full knowledge of the existence of said proration orders then outstanding affecting said field, and that if plaintiff complied with said orders it would be allowed to produce only its ratable share of the allowable production in said field as determined from time to time by said Commission. They allege that plaintiff made no protest to the defendant Commission or any of the defendant Commissioners against the existence, validity, or any of the terms of said orders, prior to the filing by plaintiff of this suit on September 15, 1930, which was shortly after the completion of said pipe line. They further allege that at

the time of the making of the Commission's order of October 28, 1930, pleaded by the plaintiff, the potential capacity of the plaintiff's then existing two wells in said field was approximately 10,400 barrels per day, and that at the same time the total potential capacity of all producing wells in said field was approximately 2,800,000 barrels per day, and that at said time the reasonable market demand for crude oil in said field was for 131,095 barrels per day.

5. They allege that plaintiff's oil and gas leases on the lands described in paragraph VI of said bill which are located in Seminole County, Oklahoma, were acquired by plaintiff after the passage and approval of the Oklahoma Oil Conservation Act attacked by plaintiff. They allege that the said lands held under lease by plaintiff in Seminole County are in two separate tracts, and held by plaintiff under separate oil and gas leases; that one of said tracts of [fol. 53] land, namely, the E. 2 of the S. E. 4 of the N. E. 4 of Section 14, Township 7 North, Range 6 East, Seminole County, Oklahoma, contains 20 acres of land, more or less; that same is located in what is known as the "Little River" oil field being a part of the so-called "Greater Seminole" oil field; that three of the nine wells alleged by plaintiff to have been drilled on said leases in the Greater Seminole field were drilled on said 20 acres of land, its well No. 3 thereon being a twin well to its Well No. 2 thereon, and said Well No. 3 was drilled and completed into a producing horizon above the depth at which Wells No. 1 and 2 were completed, being one well in the center of one ten acre tract and two in the center of the other ten acre tract; that said Little River oil field covers about six and one-half sections of land and that approximately 375 producing oil wells have been drilled therein, including plaintiff's said three wells, and that plaintiff's wells are located in about the center of said field, and that seven other companies own each a separate lease adjoining or cornering the land covered by plaintiff's said lease, and that there are ten wells, each well in the center of a ten acre tract, offsetting the same either directly or diagonally, so that said twenty acres of land is completely surrounded by other producing wells belonging to the other companies, and that in said field as a whole the wells are located, generally speaking, one well to each ten acres of land.

They further allege that the other tract of land, namely, the S. 2 of the S. W. 4 of Section 9, Township 6 North, Range 6 East, Seminole County, Oklahoma, on which there is an oil and gas lease owned by plaintiff to the extent of an [fol. 54] undivided one-half interest, is located in what is known as the "Konawa" pool, which compromises a part of the so-called "Greater Seminole" oil field; that the 80 acres of land covered by the said lease is located in the north end of said pool, and that six of the nine wells alleged by plaintiff in its bill of complaint to have been drilled on its leases in the Greater Seminole field have been drilled on said eighty acres of land, there being one well to each ten acres of said land, except the east twenty acres thereof on which twenty acres no well has been drilled; that said Konawa pool covers approximately two and one-half sections of land and wells have been drilled (on ten-acre locations) offsetting the plaintiff's said six wells to the north, northwest, west, southwest and south, so that said land is surrounded on all sides, except the east, by producing oil wells belonging to other companies.

6. Defendants are without knowledge that the plaintiff owns oil and gas leases on approximately 600 acres of land surrounding its well in Garfield County, Oklahoma. They deny that there are no correlative leasehold owners of oil and gas rights in the pool where said well is located and from which it obtains its production and that there are no neighboring oil and gas leases whose lands are being drained by said well, and aver that oil and gas leases are held by other operators around plaintiff's described holdings in said county and that other wells are being drilled on such surrounding acreage in search for oil from the same producing formation from which said well of the plaintiff is producing, and they further aver that plaintiff's said producing well came into production on or about May 29, 1930.

[fol. 55] 7. Defendants allege that the plaintiff never at any time prior to September 15, 1930, when it filed this suit, sought any relief against the issuance or enforcement of the proration orders of said Commission which had theretofore been issued, beginning with the order of August 9, 1927, although many of said prior orders affected its then existing production in Seminole County in the Greater

Seminole Area, and did not seek any such relief until the filing of this suit after the completion of its first well on its extremely small town lot lease, its .48 acre lease, in the Oklahoma City field, and the completion of its pipe line into said field when its situation became for the first time one where, if it could prevent the enforcement of the Conservation Act of Oklahoma and the said proration orders then in force affecting said Oklahoma City field, it could and would gain an unfair and inequitable advantage over other producers whose wells are upon larger tracts of land in said field than plaintiff's and who have no outlet *for* their own for their oil but must depend upon the common purchasers of oil for an outlet; and they say that, by reason of these circumstances, the plaintiff is guilty of laches and that plaintiff acquiesced in the enforcement of said law prior to the time when it could gain a decided advantage over its neighbors by striking it down, does not come into this court with clean hands, and now seeks the aid of this court to gain an unconscionable advantage over others.

8. They admit that the Oklahoma Legislature passed the laws pleaded by plaintiff.

9. They admit the making and entry by the defendant Corporation Commission of the State of Oklahoma, and acting as such Commission, of the various proration orders, in- [fol. 56] cluding the findings of fact and the decretal parts thereof, pleaded by plaintiff, copies of which are attached to said bill of complaint. They deny that the findings of fact in paragraph "F" of the Commission's order of June 30, 1930, No. 5189—was without any evidence before said Commission; and deny that said orders or any thereof was made without evidence. They allege that in addition to the orders pleaded by plaintiff, the said Corporation Commission made and entered an order on December 30, 1930, No. 5413, in Corporation Commission Cause No. 10326, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof, the effect of which was to extend and continue the force, effect and operation of the Commission's order, rules and regulations issued October 28, 1930, by Order No. 5369 in Cause No. 10146, for the months of January, February and March, 1931, except as modified by the said order of December 30, 1930, No. 5413, and to regulate the production of oil and the operation of wells of all

producers of oil in the various oil fields of the State of Oklahoma, including the Oklahoma City field and the Greater Seminole field, as is shown by the terms and provisions of said order, and to prescribe rules and regulations for carrying into effect said order as is shown therein. They allege that on April 20, 1931, said Commission made and entered its order No. 5468 in said cause No. 10326, relating to the Oklahoma City field, a true copy of which is hereto attached, marked Exhibit "B" and made a part hereof, and that therein and thereby said Commission continued in force and effect all existing orders relating to the production of crude oil and natural gas in the Oklahoma City field as modified by subsequent orders and except as modified in said Order No. 5468, and increased the allowable produc-
[fol. 57] tion in said field to 7% of the potential production between seven o'clock A. M. April 20, 1931 and seven o'clock A. M. May 1, 1931, and fixing the allowable production at 6% of said potential for the period between seven o'clock A. M. May 1, 1931 and seven o'clock A. M. June 1, 1931, as shown upon the face of said order. They allege that on April 21, 1931, the said Commission made and entered its order No. 5470 in Cause No. 10326, a copy of which is hereto attached, marked Exhibit "C" and made a part hereof, wherein and whereby said Commission modified its order of October 28, 1930, No. 5369, insofar as the same related to Class "A" wells from ten barrels per day to twenty barrels per day, and ordered the production in excess of twenty barrels per day to be prorated upon a 50% basis; and placed the Konawa pool in Class "C"; the extension of East Earlsboro pool in Class "C", and the East Earlsboro pool in Class "B" in the classification of pools as set forth in the said order of October 28, 1930; and except as so modified, continued in force and effect its said order No. 5413, and an Order numbered 5369 which had been entered in said case. That on May 29, 1931, the said Commission made and entered its Order No. 5486 in said cause No. 10326, a true copy of which is hereto attached, marked Exhibit "D" and made a part hereof, whereby, among other things, said Commission fixed the percentage of allowable production in the Oklahoma City pool in cases of wells then not over produced at 6% of their potential production for the period from June 1, 1931, to July 1, 1931, and until the further order of the Commission.

They allege that said orders of the defendant Corporation Commission in each case continued in full force and ef- [fol. 58] fect its existing orders relating to the production of crude oil and natural gas in the State of Oklahoma, and the several fields thereof, except as modified by subsequent orders, and fixed from time to time the permissible percentage of production from each of the several oil pools and fields and classes of pools, as is shown upon the faces of said orders, and that the said orders as modified by other and subsequent orders herein admitted to have been entered or herein pleaded, are at this time in full force and effect.

10. Defendants allege that before any of the said orders were made, a petition was filed, in each instance, with the defendant Corporation Commission in which facts and circumstances were set forth which, if true, made it the duty of the said Commission and members thereof to proceed in accordance with the provisions of said Oil Conservation Act to conduct a hearing and determine whether or not orders, rules and regulations should be made and prescribed for the enforcement of the provisions of said Act, and praying for the making and entry of orders, rules and regulations accordingly; that said petitions respectively were duly set down for hearing at a time certain, and at the office of the said Commission in the Capitol Building at Oklahoma City, Oklahoma, and that in each case the said Commission issued a notice to all persons and classes interested, advising of the time and place of the hearing, and caused same to be published in a newspaper of general circulation in said state, and in addition thereto, issued and caused to be duly served a notice in writing to all persons, firms and corporations, including the plaintiff herein, known to the Commission to have any interest in said proceeding; and that [fol. 59] in each such instance, the Commission, at the time and place fixed, conducted an open public hearing on the said petition at which many persons interested in said matter personally appeared, and that the Commission then and there received and heard evidence fully establishing, in each instance, the necessity for the orders sought, and expressly offered to all persons an opportunity to be heard, and that at the conclusion of the hearing in each case, said Commission made and entered its findings of fact and its orders, rules and regulations as contained and set forth in the said several orders, as shown by the copies thereof attached to

plaintiff's bill of complaint, and the additional orders exhibited hereto.

11. They allege that the curtailment from time to time of the production of oil in each of the oil fields and pools affected by the said orders respectively and by the rules and regulations therein set forth, was to an amount of oil which, from the evidence before the Commission, conformed to the reasonable market demand for crude oil in said fields or pools respectively, and further allege that at the respective times of making and entering the said orders respectively, the potential production of the wells in the said fields respectively, greatly exceeded the reasonable market demand for crude oil in said fields respectively, as was found by the said Commission at the time of making and entering the said orders, and that such excess of potential production over reasonable market demand continued throughout the period of time that the said orders continued in force, and that there is at this time a very large excess of potential production in said fields over and above the reasonable [fol. 60] market demand for oil in said fields, and they state that it was necessary that the said orders be made and entered in order to prevent these wastes of crude oil in said fields which are defined and prohibited by the said Oil Conservation Act. They allege that the amount of the potential production of each of the pools placed under proration in and by the said orders respectively, was found by the said Commission, and was at the dates, respectively, of said orders, the amounts, respectively, stated in the said orders in the case of each such pool and that the amount of the then existing reasonable market demand for crude oil in each of said pools, respectively, is stated and set forth in said orders.

They allege that the Oklahoma City field has been in a condition of constant development and expansion, ever since it was opened up in December, 1928, and additional wells are at this time being drilled therein; that the wells are of the unusual depth of over 6,000 feet, the area of prolific production is unusually large, the wells have ranged in initial potential capacity from 2,500 to 90,000 barrels per day, that some of the largest wells have been completed during recent months, and that the gas pressure in the producing formations are the highest encountered in any field

in the State, being, usually, initially in excess of 2,000 pounds to the square inch. They further state that said field is the youngest field of consequence in the State, and came into production at a time of overproduction of oil elsewhere in the State and in the nation, and at a time when the common purchasers of oil had no desire to purchase from new fields, with the result that at least as early as the Fall of 1929, by which time a number of wells of large capacity had been completed in said field, the reasonable market demand for oil in said field has been far below the potential capacity of its wells; that in its order of October 28, 1930, the Commission found that the potential of said [fol. 61] field had increased to 2,800,000 barrels per day, and additionally, it made the following findings of fact, namely:

"The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time is approximately 131,095 barrels per day, and that in the month of November said reasonable market demand from said pool will be approximately 134,589 barrels per day, and that in the month of December the reasonable market demand from said pool will be 131,003 barrels per day, and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the 'Class A' pools herein to the Oklahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for

crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste."

In said order of October 28, 1930, from the evidence before it, the Commission further found as facts the following, to-wit:

"The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and, therefore when wells are drilled into a pool [fol. 62] or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their wells to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state

if production were not curtailed as provided in this order.

"The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, without limitation as to time, would cause serious underground waste."

12. They further allege that although the plaintiff herein was a party to the proceedings before the said Commission in the case of each of the said orders, and had been duly notified of the hearings to be conducted, and had actual advance knowledge thereof, it made no objection and took no exception to the said orders at the time they were made nor afterwards (except as hereinafter stated), took no appeal therefrom or any thereof to the Oklahoma Supreme Court and did not and has never at any time sought to obtain any order of the Supreme Court of Oklahoma sus- [fol. 63] pending or superseding the enforcement of said orders or any thereof, and that, therefore, the plaintiff has waived its right to now question the validity of said orders or any thereof or any part thereof, either in this suit or otherwise; except that the plaintiff, through its president, H. H. Champlin, did appear at the hearing conducted upon the said application upon which the said order of October 28, 1930, was based, and he, the said H. H. Champlin, testified as a witness in opposition to the granting of any order based on the application for said order, and in his testimony stated substantially the same facts with reference to the ownership by plaintiff of oil wells and production and of a refinery and pipe line as are set forth in paragraphs V to X, both inclusive, of its said amended bill of complaint filed herein; but the plaintiff failed to except to the said order of October 28, 1930, when entered or afterwards, or to take any appeal therefrom, and made no objection to this Commission or the members thereof, other than in the testimony given by him, as aforesaid, and did not appeal therefrom to the Supreme Court of Oklahoma as it had the absolute right to do under the laws and Constitution of Oklahoma, and sought no suspension or supersedeas of said order or any part thereof at the hands of said Supreme Court, as under said Constitution and laws it had a right to do; and with the further exception that plaintiff did, on November 7, 1930, as alleged in paragraph XXXV of its bill of complaint, file with the

said Commission a written special appearance and motion to vacate the order of October 28, 1930, and the rules and regulations therein prescribed wherein it prayed for the vacation of said order and other prior proration orders affecting plaintiff at least insofar as plaintiff was concerned, and that in any event the Commission order a suspension as to plaintiff of the penalty provisions of the [fol. 64] statute during the pendence of this suit. They admit that plaintiff's said motion was set for hearing and was heard on November 20, 1930, and that it was denied on November 21, 1930, but they allege that plaintiff failed to take any appeal from the said action of the Commission on the said motion, and allege that the plaintiff has not attempted to avail itself of the remedies provided by the laws and Constitution of the State of Oklahoma to obtain any vacation or modification of the said order or any part thereof, or any suspension or supersedeas thereof.

13. Defendants admit that the defendant Commission did not curtail the production of crude oil in the smaller fields in said state in either its order of June 30, 1930, or that of August 30, 1930, and allege that this was for the reason, among others stated in said orders, that at said times said smaller fields and each of them had an adequate market outlet for the oil produced therein, so that the full production from each of said pools could be and was being produced and taken without waste. That in making said orders and the order of October 28, 1930, said Commission classified the various oil fields in the state on the basis of the existing relation between the potential production of each pool and the amount of the crude oil which could be produced therefrom without waste; and that because said relation was not the same in all the pools involved, the percentage of curtailment necessarily varied as between pools.

14. Defendants deny that the defendant Corporation Commission of Oklahoma, made, entered and promulgated said orders attached to said bill of complaint, or either of them, without having heard the testimony of any witness [fol. 65] under oath, and without having heard and considered any sort of legal or competent or adequate evi-

dence upon which to base said orders or either of them; and in this connection state and allege that said orders were made and entered after the hearing of testimony of witnesses under oath amply competent and adequate, and in fact overwhelming, to sustain and support the said orders and each of them. In this connection defendants further state and allege that the facts upon which said orders were predicated were so widely and generally known within the State of Oklahoma, that said Commission and the members thereof would have been justified in taking judicial notice thereof, and without evidence, made the orders which, upon evidence, they did make. They further state and allege that the remedy of the plaintiff for an attack upon the said orders or either of them, upon the ground that the Commission made and entered same without any legal evidence upon which to base the same, if it were true that there was no such evidence before the Commission, was by appeal to the Supreme Court of Oklahoma for review upon that ground and for reversal of the said orders upon that ground, and not by injunction as herein sought.

15. They admit that in the order of June 30, 1930, shown by Exhibit "A" attached to plaintiff's bill of complaint, Ray M. Collins was appointed by said Commission as its umpire and was authorized to employ assistants to aid him in administering said rules and regulations, and that said Ray M. Collins is now and for several years last past has been the umpire of the defendant, the Corporation Commission, purporting to act, and they allege that he has been so acting, as the agent and representative of said Commission, but they deny that said Collins is not now and never has been a legal agent of said Commission and that [fol. 66] he is not now and never has been an officer of the State of Oklahoma with authority to act in respect to the matters covered by the said act approved February 11, 1915, or the rules and regulations made thereunder by said Commission. They admit that in the order of October 28, 1930, No. 5369, the defendants again appointed Ray M. Collins as umpire and agent of the Commission to enforce the rules and regulations therein made, and authorized him to employ as many assistants as he should deem necessary, and in this connection they allege that the appointment as aforesaid, of said Collins as such umpire was made with

the consent of the Governor of the State of Oklahoma, as authorized by the provisions of Section 5 of the said Conservation Act. They deny that said Collins at any of said times was the paid employee and representative of numerous persons, firms and corporations producing oil in the various fields of Oklahoma, and engaged in the manufacture of refined products and marketing the same in competition with complainant. They admit that said Collins for his services in acting as said agent and umpire of the Commission, is now and has been receiving a monthly salary at the rate of $2000.00 per month, but deny (subject to the explanation hereinafter made) that he has been receiving the same from various firms, persons and corporations engaged in the production of crude oil in Oklahoma, and the refining of crude oil in competition with complainant, and admit that said Collins has never been paid nor promised by the State of Oklahoma or any political subdivision thereof, any compensation for his services as umpire and agent of said Commission, and in this connection they allege that the compensation paid to said Collins for his services as agent and umpire of said Commission as above admitted, has not been and is not being paid by any indi- [fol. 67] vidual or faction, but that the manner of its payment was and is as follows, to-wit: There being no public funds available out of which the said Commission could or can pay said compensation, said Collins has received his compensation out of a common fund created by proportional assessments voluntarily made by consent of practically all producers interested, and levied on practically all the oil producers interested in the oil fields in which said Collins has served and is serving. They admit that said Collins has at all times acted in conjunction with a so-called Operators' Committee, composed of various individuals producing oil in Oklahoma, and representatives of firms and corporations producing crude oil in Oklahoma fields, but are without knowledge that the firms or corporations with which they are associated are manufacturing the refined products from crude oil and marketing the same in competition with plaintiff, and they deny that said Collins has at all times or at any time acted in the service of said so called Operators' Committee and/or said representatives of firms or corporations. In this connection they allege that said Collins has acted solely in the service

of said Commission and that in each oil field placed under proration by the said orders, a so called Operators' Committee, composed of producers in said fields respectively, were selected and appointed by said Commission, and that such Operators' Committees were merely advisory committees, the members of which served without compensation. Said Commission issued its orders appointing said umpires and Operators' Committee as agents of the Commission to enforce said orders and the Governor of Oklahoma consented thereto in writing.

16. Defendants state that the orders of the Corporation Commission complained of are exceedingly difficult of enforcement, not because of any uncertainty in the rules and [fol. 68] regulations of the Corporation Commission to prevent waste, but because of the peculiarly technical and complex nature of the business of producing oil. That, accordingly, to enforce said regulations against waste, it became necessary to obtain and utilize the advise of practical oil men; that, accordingly, in addition to the services of said umpire, in respect of each district brought under restraint, under the orders of the Corporation Commission, an Operator's Committee, entirely familiar with the peculiar producing conditions of the particular pool was thought by the Commission and has been found to be helpful as an adviser to the Umpire in enforcing the prescribed and definite rules of proration laid down by the Corporation Commission. That it was because of these circumstances that an advisory committee of operators interested in each pool put under proration was provided for in the orders of the Corporation Commission complained of. And, although the function performed by them was to advise with the Umpire regarding the enforcement of the specific rules and regulations of the Corporation Commission, by virtue of their appointment by the Corporation Commission, consented to by the Governor, they became the agents of the Commission, within the terms of said Conservation Act. That the function of the umpire was to enforce the specific rules of the Corporation Commission complained of in plaintiff's bill involving vast detail and a technical and practical knowledge, so that each operator, including the plaintiff, in a particular pool brought under restraint should be subject to an equal and equitable restraint in comparison with that imposed upon

all the other operators in the pool. They allege that plaintiff has never at any time complained to the defendants or any of them that any member of any of the Operators' Committees was not fitted for his position or has acted unfairly or impartially; nor has plaintiff sought any change in the personnel of any of said committees.

[fol. 69] 17. They admit that the Commission's said Order No. 5189 made on June 30, 1930, contains the provisions copied in paragraph XIX of said bill, and that said Order No. 5369 made on October 28, 1930, contains the provision copied in said paragraph XXI of said bill; but said defendants state that said provision in the order of June 30, 1930, as quoted in said bill is preceded by the following language:

"Where precentage proration is applied a gauge of producing wells shall be taken by the Umpire or under his supervision in the following manner:"

and the provision in the order of October 28, 1930, is preceded by the following language:

"Where percentage proration is applied a gauge of *of* producing wells shall be taken in the following manner:"

and is followed by the following language:

"During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the 'Class A' pools, the gauge may, upon direction of the Umpire, be determined by applying the proper decline curve for each lease so guaged."

18. They deny that the oil wells in the Oklahoma City field have never been gauged by the said Commission or by any competent and legally qualified agent of said Commission or legal and qualified officer of the State of Oklahoma, and deny that the Commission's findings of the potential production in the Oklahoma City field set forth in the various orders, were not based upon any gauge of the wells in

said field, and that the Commission's findings of the potential production in the Seminole field and other fields set forth in said orders, were not based upon any gauge of the wells in the said fields respectively, and that no legal and lawful gauge as provided by the Oklahoma Statutes, has ever been made by said Commission or under any valid rules prescribed by it, and alleged that neither Section 7958, Compiled Oklahoma Statutes, 1921, nor any other provision of the law, requires that said wells be gauged by officers of the State of Oklahoma or agents employed or appointed by [fol. 70] said Commission, with the consent of the Governor, but only that they be gauged under rules and regulations to be prescribed by said Commission, and they state that rules and regulations for gauging all wells operated on a percentage basis were prescribed and incorporated in said orders, and that all wells so operated were gauged by or under the direction of the Umpire in accordance with said rules and regulations. They state that in practice there are two methods whereby the wells in a given field may be operated to accomplish the taking from his well or wells, by each producer, of only that proportionate part of all the oil that may be produced from such field without waste as the production of the well or wells of such producer bears to the total potential production of such field, one being the so-called "percentage basis" and the other the so-called "time basis". By the percentage basis of proration, each well owner, by the application of back pressure on each of his wells, while operating same continuously, restricts the flow of oil therefrom so that in the prescribed period of time it produces its proportionate part of the allowable production from the field; and by the time method the wells are grouped into classes and the owners of one group of wells operate their wells to full capacity for a fixed short period of time while all other wells in the field are shut in, then the wells of another class are so produced, and so on, with the result that each well is on full production for a fixed short time and is then entirely closed until its turn again so to produce is reached; and they state that the wells in all fields affected by said orders except the Oklahoma City field have at all times been operated on a percentage basis; and that prior to January 3, 1931, the Oklahoma City field was operated on a time basis, and that prior to said date the potential capacities of the wells in said Okla-

homa City field were determined by ascertainment by the umpire, from day to day as said wells were on production, of the amounts produced by said wells, respectively, when [fol. 71] on production from time to time; and since said date in the form and manner prescribed in orders No. 5414, 5437, and — pleaded by plaintiff.

19. They deny that various persons, firms and corporations owning and operating oil wells in the Oklahoma City field, the Greater Seminole field and some of the other fields, organized what is known and referred to in the Commission's rules, regulations and orders complained of by complainant as an "Operators' Committee" and state that the several Operators' Committees for the several prorated fields covered by said orders, were suggested by said Ray M. Collins, Umpire, approved at meetings of producers duly called, at which all the producers in said field respectively, were notified and given an opportunity to be present, and that their appointment by the said Commission (with the consent of the Governor) was an exercise of the independent judgment of said Commission.

They deny the import of the allegations of paragraph XXIII of plaintiff's bill of complaint relating to the appointment and function of an Operator's Committee, to the effect that there is one Operators' Committee for all the prorated fields, and allege that there is a separate Operators' Committee for each prorated area.

20. They deny that the Operators' Committee (for the Okalhoma City field) procured the Commission to name one of their employees, Otto B. Bradford, as the so-called umpire of for the Oklahoma City field, and state that said Bradford is not and has never been an employee of any member of said Committee, and allege that said Bradford was nominated as assistant umpire and assigned to said field by Umpire Ray M. Collins, and his employment and appointment were made by said Commission with the consent of [fol. 72] the Governor of said state. The- deny that said Bradford acts under the direction of the Operators' Committee for said Oklahoma City field, and allege that he acts under the direction of Ray M. Collins, umpire for the state as a whole, and said Commission. They admit that it was the business of said Bradford as said umpire, to see that the producers of oil in the Oklahoma City field keep their

wells closed down on said proration basis, but deny that it is his business to see that production is allowed in said field upon an unfounded and unwarranted estimation of the potential production of said field. In this connection they allege that by order of said Commission, entered originally in the Fall of 1929, at the request of all of the then producers in said field, and continued in force from time to time since then but not beyond January 3, 1931, at the request of a majority of the operators therein, and after a full hearing the Oklahoma City field was operated upon the time proration basis. They aver that the plaintiff never protested to defendants against said method of operating said field or complained to defendant that the potential production as ascertained by the Commission or the Umpire was not correct, and they allege that they are informed and believe and therefore allege that at a meeting of the Oklahoma City field producers held in the Fall of 1930, a vote was taken on a motion to recommend to the Commission that it order said field to be thereafter operated on a percentage basis, and that a duly authorized representative of plaintiff who was present and voted against making the change though a majority of the producers voted in favor thereof. They admit that Otto B. Bradford has never received nor been promised any compensation by the State or any authorized agent or political subdivision thereof, for his services as Umpire. They deny that said Bradford has been receiving compensation from said Operators' Committee for his services, and deny that all or any of his acts or deeds have been illegal and unauthorized by any valid rule and regulation of the Commission or by the provisions of any statute of said state, and they allege there being no [fol. 73] public funds available out of which the Corporation Commission could pay said Bradford for his services, he has received his compensation out of a common fund created by proportional assessments voluntarily made by consent of and paid by practically all producers in said Oklahoma City field.

21. Answering the allegations of paragraph XXIV of said bill of complaint, these defendants allege that the plan set forth in said orders for gauging the wells affected by said orders, is a practical and workable plan, designed to accomplish fair, true and equitable gauges of said wells, and same was and is authorized by the provisions of said

Conservation Act, and that the complainant has not at any time made objection before the defendant Corporation Commission that the said plan is not fair and practical, or that it does not accomplish a true and correct gauge of the wells, and has never sought any modification by said Commission of the said orders or any of them in this regard, and they deny that the said rules, regulations and orders of the Commission are each and all, or any of them, void, in that in not providing for notice of the taking of gauges of wells, except as provided in said orders, they deny the plaintiff due process of law or the equal protection of the laws guaranteed to plaintiff by the Fourteenth Amendment; and they further aver that the matter, method and manner of gauging said wells in order to determine the potential production thereof, is an administrative and ministerial function.

22. Answering the allegations of Paragraph XXV of said bill of complaint, defendants state that the reason no operator in the Oklahoma City field has stored crude oil in earthen tankage or permitted it to run at large on the surface of the earth (except in the case of a few wells, that, by reason of the extremely high pressure in the underground oil or gas reservoir, became uncontrollable and ran wild for several days) is because of the existence and en- [fol. 74] forcement of the proration orders herein complained of, and the orders which preceded them, and they aver if the said orders had not been made and plaintiff had been heretofore permitted to produce its wells to capacity or substantially to capacity, then plaintiff would have drained a large part of the oil from under the lands of the neighbors and additionally would have caused underground waste of oil, or, its neighbors, in an effort to protect themselves, would have produced and wasted immense quantities of their own oil in earthen storage and otherwise, evils which said law was designed to prevent.

23. Defendants state with reference to the sections of said Conservation Act which are involved herein, that is to say, all the sections thereof except Section 2, being 7955 C. O. S. 1921, (as to the validity of which excepted section the defendants make no allegation for that the Commission has not acted thereunder in the orders herein involved), that they are not invalid under the Fourteenth Amend-

ment to the Constitution of the United States for that oil and gas are irreplaceable natural resources of the State and while in the ground possess the power of self-transmission from place to place, and First, the Legislature of Oklahoma, acting under the police power, had and has authority to regulate and restrict the use and enjoyment by landowners within the said state of the natural resources of the state, including oil and gas, so as to protect said resources from waste; and, Second, said Legislature under the police power was possessed with authority to regulate and restrict the use and enjoyment by landowners within said state of the oil and gas in and under their lands so as to prevent the infringement by any of such landowners of the rights of others to extract and reduce to possession their respective fair and equitable proportionate parts of the oil and gas in the reservoirs beneath the lands of all; and, Third, said Legislature possessed the power to reach the end of so protecting the said rights of the several land [fol. 75] owners in a common source of supply of oil and gas by legislation designated to prevent waste.

Defendants aver that in the enactment of said Act approved February 11, 1915, the Legislature of Oklahoma was dealing not only with a natural irreplaceable resource, but also with a peculiar species of property of vast importance and consequence to the State of Oklahoma as a proprietor and to the economic welfare of the people of said state. Defendants aver that oil and gas underground possess characteristics not shared by other species of property. That the typical oil reservoir in the State of Oklahoma and in the other American states, including the Oklahoma City oil pool, the greater Seminole oil area and the other fields in respect of which complainant complains, is characterized by the following conditions: (1) Oil and gas exist in the ground in sedimentary rocks, being a porous, sandy strata, or in lime formations varying in texture and porosity, and these are called oil pools. (2) They exist in their undisturbed state under pressure, often quite high. (3) In said pools both oil and natural gas will be encountered as the occupants of the same reservoir. (4) There will be a quantity of free gas inhabiting the higher portions of the saturated formation, such gas being almost entirely, if not completely disassociated from the oil content of said formation, but exerting a pressure throughout the same. (5) In

addition to said free gas large quantities of natural gas will be found in the reservoir dissolved in the oil contained therein which association between the oil and gas reduces the viscosity of the oil and otherwise tends to increase its mobility so that when the reservoir is penetrated by a well the propensity of the oil to migrate to the opening thus created and to be lifted to the surface is vastly augmented, [fol. 76] and as a result of this physical condition oil may be drained from the lands of one oil operator through the well or wells of another operator penetrating the common reservoir. (6) Furthermore, upon the penetration of the reservoir by a well the free gas at the top of the structure functions in such a way as to drain the oil originally inhabiting one tract of land to the tract penetrated by the well. (7) the free gas at the top of an oil structure and the gas dissolved in the oil therein constitute what in the oil industry is defined as the "gas energy" of the particular pool, and the gas energy of an oil pool is the chief agency in moving petroleum laterally to a well penetrating the reservoir, and also in lifting it to the surface for recovery for commercial purposes. (8) until such time as the pressure called "gas pressure" in the reservoir is dissipated through wells drilled into the reservoir, the oil and gas flow through the wells, when opened; thereafter the oil is usually extracted by pumping.

That the characteristics of oil and gas hereinbefore mentioned apply to all the oil properties described in plaintiff's bill, and the pools wherein they are situated. That these characteristics establish a community interest in the gas energy or pressure of an oil pool between and among all of the proprietors having rightful access to the particular reservoir, by reason of the fact that should one oil operator therein wastefully or inefficiently or disproportionately use said gas energy or pressure to produce his oil, such use to the extent of such waste or that it is improper, deprives the other oil operators in said pool of the right to recover the quantity of oil from their lands which they might recover if there were no such waste of gas energy or pressure or no inefficient or disproportionate use of the same. Accordingly by the nature of the subject matter dealt with correlative rights and obligations apply to an oil and gas pool. No operator therein may disproportionately use the gas pressure or energy of the pool so as to take from the

pool a disproportionate part of the oil content thereof, without at the time, and by so doing, seriously injuring the coequal right of other surface proprietors to use said energy and extract the oil, and at the same time produce under- [fol. 77] ground waste. As has been alleged, at the time of the making of the orders herein complained of, and at the time of the filing of this suit and at all times since then and now, the potential production of the Oklahoma City pool and each of the other pools where plaintiff's wells are located, greatly exceeded and exceeds the reasonable market demand for oil therein, as is shown on the face of said orders. The facts last alleged demonstrate that it is not possible to market all of the oil production from either of said areas. Complainant states that it is in position to take all of its production, both from the Oklahoma City pool and from the Greater Seminole area and the other fields where it has wells, but defendants aver that all of the oil operators therein are not only unable to market or otherwise utilize all of their production therefrom, but only a part thereof, and in the Oklahoma City pool a very small part thereof, and that if complainant shall be permitted to take all of its production from said pools, such action on its part would destroy the community nature of the gas energy in each of said pools, and in so doing, the complainant will be able to produce more than its proportionate share of the production from said pools to the destruction of the property rights of the other operators in said pools, and will cause waste; if the complainant shall be permitted to do one of the things designed to be prevented by the statute recited in complainant's bill, that is to say, instead of submitting to a proportional taking of oil from each of said pools, each operator thereby being permitted to produce such proportion of the market outlet of the pool as his potential production bears to the potential production of the pool, complainant would be permitted to produce all of its oil to the irreparable detriment of the other operators in each of said pools, by draining the oil from their properties and causing them to commit waste by flowing their oil into open earthen storage because of inedaquate market outlets for their oil. The said statute was designed to prevent both the evil of commission of waste and the evil of disproportionate taking on the part of several operators in a common pool when the full production therein cannot be had without

waste, and thus to prevent the consequences above enumerated growing out of permitting the complainant herein to produce without restraint the oil from its wells in the said pools where there is an inadequate market outlet.

[fol. 78] Defendants aver that the said Act was adopted by the Legislature of Oklahoma in order not only to prevent the waste in crude oil under ordinary circumstances, but also to prevent its waste incident to the production of crude oil in excess of transportation and marketing facilities or reasonable market demands, and defendants aver that as is above explained, actual waste of crude oil occurs as an incident to the production of crude oil in excess of transportation or marketing facilities or reasonable market demands, and that additionally, and as an incident to the prevention of waste under the said circumstances, said statute had as one of its purposes the protection of the coequal rights of the several land owners in a common source of supply of crude oil against the taking by anyone thereof of an unfair and disporportionate part of the oil content in such common source of supply. In this connection defendants allege that prior to the enactment of said statute and its approval on February 11, 1915, as at all times since its enactment, there were and have been three classes of oil operators in the State of Oklahoma, namely: First, the completely integrated unit which produced, transported, and refined petroleum and marketed the products thereof; Secondly, the quasi-integrated unit which produced, transported and marketed crude petroleum; thirdly, the non-integrated unit which engaged in the sole business of producing oil. Defendant aver that in the years 1905, 1906 and 1907, the Glen Pool in Oklahoma was under active exploitation, and that the three classes of oil operators held producing leases therein; that the integrated and quasi-integrated units produced all the oil that they could produce from their properties, and that a non-integrated oil operator owning production alone and having no actual market for all his output was totally unable to produce all his potential production from said pool. In consequence, by virtue of the nature of the substances involved, the integrated and quasi-integrated units in the oil producing business used more of the gas energy and pres-

[fol. 79] sure of the pool than they were entitled to; that an integrated or quasi integrated oil producer was able to take from his lease all the production therefrom when his neigh-

bor or neighbors, non-integrated producers, were not able to market any oil therefrom, or to market a production therefrom bearing any equitable relation to the quantity taken by said integrated or quasi-integrated producers. That the oil industry of the State of Oklahoma passed through the same experience in the Cushing field in Oklahoma between 1913 and 1915; and in the Healdton field the condition existed of an integrated or quasi integrated oil producer being able to produce and market all of his production from a particular oil pool, although at the time an adjacent operator or another operator in the same pool was not able to market any or at the most an inappreciable quantity of the production of his wells. As a result, the integrated or quasi-integrated operators of the state were utilizing a community property, namely, the gas pressure energy of the pools in which they were interested, to the fullest possible extent and to the overwhelming detriment of the non-integrated operators in the pool, who, by reason of the action of the integrated producer, were compelled to either submit to drainage or run their oil into earthen storage where it evaporated and wasted. And defendants aver that to meet this evil and to establish equality of production during periods of oversupply, and otherwise to prevent waste, the Act effective February 11, 1915 was enacted.

Defendants aver that petroleum is an irrenewable and irreplaceable natural resource, and that when the oil resources of the State of Oklahoma are exhausted, they cannot be replenished by any human agency. Defendants aver that notwithstanding a condition of acute overproduction in the American petroleum industry at the time of the enactment of said Conservation Statute, the discovery of new petroleum resources was entirely a fortuitous circumstance; that new petroleum supplies in the state might or might not be discovered, and that the science of finding oil had not yet so advanced as to determine whether there would be an over or [fol. 80] under-supply of petroleum. That in consequence of the irreplaceable character of petroleum it was within the province of the state to safeguard the supply therein so as to continue as long as possible the economic prosperity of the state as a producer of petroleum. That, in addition, the petroleum industry at that time was the second among the productive enterprises of the state, not only in the value of its products, but in the employment of men engaged in said

business. That, accordingly, the predicament of the petroleum industry in said state entered largely into the general welfare and prosperity of the citizens of said state, not only through the direct employment of thousands of employees, but by their contribution to the general welfare and prosperity of the state. That, in addition, the State of Oklahoma itself owned vast tracts of land which were favorable for the production of petroleum which would add to the revenues of the state and therefore contribute to the general welfare of the citizens thereof. That it was by reason of these things, community nature of the gas pressure or energy of an oil pool, the general welfare of the people of the State of Oklahoma, and the situation of the state in its proprietary capacity, that the Act effective February 11, 1915 was enacted. During periods of overproduction in the petroleum industry of said state, that Act denies to any oil operator in a pool where the market outlet does not equal the full production, the right to take all of the oil production from his properties that they are capable of producing, and yields to them the right to produce from their properties the same proportion of their production that the other operators in the particular pool may produce in meeting the total reasonable market demand. Defendants aver that said statute provides for proportional taking, and was designed to enforce proportional taking because of the community interest in the gas energy or pressure of an oil pool, and because of the general public welfare in respect of an irrenewable and irreplaceable natural resource of vast con- [fol. 81] sequence to the economic future of the state.

The complainant asserts privileges which said statute was directly designed to prevent, and which, under its police power, the state has the right to prevent. The complainant is an integrated oil producer; owns its production; owns transportation facilities from its production to its refinery; owns its refinery, and distributes and sells its own refinery products. If the complainant shall be entitled to produce all of its production in the Greater Seminole area and the said other pools, it shall obtain a disporportionate part of the gas energy which is the chief agency in the production of oil and of the oil; to the serious detriment of the other producers in said pool who are in position only to market a part of their production. The complainant by its bill seeks to deprive the other oil

operators in said fields of their just share of the gas energy and oil, which between the complainant and the other operators in said pools are subjects of common property interest. Accordingly, complainant's bill, instead of having as its object the protection of a property right, has as its object the invasion of the property rights of the other owners of oil properties in said pools. Accordingly, defendants deny that the orders of defendants described by complainants are void and unenforceable for the reason that the execution of the same is in violation of the complainant's constitutional rights under the due process of any other clause of the Constitution, either State or Federal.

24. Answering the allegations of paragraph XXVI of said bill, defendants deny that the rules, regulations and orders complained of are arbitrary and discriminatory in any respect alleged by plaintiff; they allege that under said order of October 28, 1930, no wells within the state are allowed to produce 100% capacity save only when the wells on any single lease average in daily production five barrels or less; that this exemption was later changed to [fol. 82] 10 barrels and still later to twenty barrels; and they further state that each oil field in said state is limited to the production of an amount of oil equal to the reasonable market demand for oil in such field, and each producer therein is restricted to the production of his proportionate amount of the oil allowed to be produced in said field, determined in the form and manner prescribed by said conservation act. They deny that plaintiff has been required and compelled by the defendants to entirely shut in its wells in the Oklahoma City field, but they allege that plaintiff has been only required to shut in its wells in said field, at some times in conformity to the time proration plan in force before January 3, 1931, which was set up for proportional production by each and every operator in said field. They are without knowledge that plaintiff can produce oil from its wells for a less cost than the price it is now and will be compelled to pay for crude oil from other producers on the open market, but say that, if it can do so the fact is immaterial. They deny that said rules, regulations and orders, even if it be true that plaintiff is compelled to purchase oil from others and

to do so at a loss over what it would be able to do if it produced and refined its own oil,—deny to plaintiff due process of law and the protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States; and in this connection state that plaintiff is subject to reasonable police regulations, such as is prescribed by the said conservation act and the said orders of the Commission made pursuant thereto, whether or not in obeying same plaintiff may suffer some loss which it would not otherwise be subjected to. They are without knowledge that under present conditions and conditions existing for several months prior hereto plaintiff has been compelled to run its refinery at a loss, and are without knowledge that if plaintiff were allowed to produce and refine its own production in Oklahoma without restriction, it could run its refinery at a profit or at least without a loss, and say that if those things be true they are immaterial facts. They deny that said rules, regulations and orders have the effect of confiscating the property of the [fol. 83] plaintiff and that they are for that reason unconstitutional and void; and they deny that they are in contravention of Section 2 or Article 2 of the Constitution of Oklahoma, copied in paragraph XXVI of said bill, for the reason there stated or any other reason; and in this connection state that the Oklahoma Supreme Court, in the C. C. Julian Oil & Royalties Company case, held that they are not in contravention of said provisions of the Oklahoma Constitution.

25. They deny the allegations of paragraph XXVII of said bill relating to the provision of said orders dealing with purchasers and carriers of oil.

26. They deny that many large oil corporations, firms and individuals selfishly interested in maintaining high prices for crude oil, or otherwise influenced, formed by an agreement among themselves what is known as an "Operators' Committee", in the rules and regulations of said Commission, and that said corporations, firms and individuals, or any thereof, through Ray M. Collins, or otherwise, formulated the so-called proration orders herein complained of, and in this connection state that the said

orders are the independent acts and represent the good faith judgments of the said Corporation Commission. They deny that said oil companies, or any of them, entered into an agreement, combination and confederation among themselves to limit the natural output in the oil fields in Oklahoma and the United States, and thereby restrict production for the purpose of controlling the price of crude oil and its refined products and eliminating thereby the plaintiff and others in plaintiff's class as competitors, and in this connection allege that said orders, rules and regulations were made and entered by said Commissioners and said Commission in good faith and as their own independent act and judgment in compliance with their duties and the obligations imposed upon them in and by said conservation act and in order to prevent the waste of crude oil and to protect the co-equal and correlative rights of the several producers and owners of oil wells in the several fields covered and affected by said [fol. 84] orders; and they deny that the said orders are a violation of Section 8 of Article 1 of the Constitution of the United States.

27. With reference to the allegations of paragraph XXIX of said bill, relating to the suit of C. C. Julian Oil & Royalties Company against the defendants herein, and the decision of the Supreme Court of Oklahoma in said case, the defendants allege that in its opinion and decision in said case the Supreme Court of Oklahoma denied the contention of the plaintiff in said suit that the said conservation act and the then existing and effective orders of the defendant Corporation Commission were invalid as being in violation of the provisions of the due process clause of the Federal Constitution and the similar clause of the Oklahoma Constitution and the other clauses of the Oklahoma Constitution which the plaintiff in this section alleges they violate; and further allege that plaintiff appeared in said C. C. Julian Oil & Royalty Company case and filed therein its brief amicus curiæ, and thereby the decision of the said Supreme Court of Oklahoma became binding and conclusive upon the plaintiff herein, and they plead that by reason thereof the plaintiff herein is estopped to now question the validity or constitutionality of the said conservation act and/or the said orders of the Corporation Commission.

28. Answering the allegations of paragraph XXX of said bill, defendants deny that the said Oil Conservation Act and the separate sections thereof (other than section 2 thereof, as to which these defendants make neither allegation nor contention inasmuch as they have not in any of the orders here involved attempted to act under Section 2), are unconstitutional and void for any of the reasons stated in said paragraph.

29. Answering the allegations of paragraph XXXI of said bill, defendants deny that said conservation act is void in that it violates Section 1, Article 4 of the Oklahoma Constitution.

[fol. 85] 30. They deny that said Act is void in that it violates Section 1 of Article 5 of the Oklahoma Constitution, as alleged in paragraph XXXII of said bill.

31. They deny that said rules, regulations and orders are void in that they were made and are maintained with threats of their enforcement in excess of the defendant Commission's authority and powers, or in that they undertake to regulate, control and unreasonably hamper plaintiff's business of refining oil and marketing the products therefrom.

32. Answering paragraph XXXIV of plaintiff's bill, defendants deny that the defendants members of and as the Corporation Commission of the State of Oklahoma, are threatening to continue to make and enforce from time to time for an indefinite period its present rules, regulations and orders, thereby depriving plaintiff of its rights guaranteed by the Fourteenth Amendment to the Constitution of the United States or that the defendants intend to and will make said rules, regulations and orders for a brief period of time and then shortly before the expiration thereof continue them all for the purpose of preventing this plaintiff from presenting to this court and to the Supreme Court of the United States the issue of the validity of said rules, regulations and orders and their constitutionality and the constitutionality of the Oklahoma Oil Conservation Act, and that this course of conduct has been maintained by defendants from month to month from June 1930, and will hereafter be continued from month to month or for brief periods for the purpose of coercing this plaintiff and others similarly situated into an acceptance and acquies-

cence of their orders, rules and regulations and with the hope that this suit, or any other action commenced in the Federal Court, will become moot before a trial and decision can be had.

Defendants state that the Corporation Commission of the State of Oklahoma began establishing the present series of orders, rules and regulations to prevent waste of petro- [fol. 86] leum in the State of Oklahoma in the year 1927 under the provisions of said Conservation Act and admit that such rules and regulations were established for comparatively brief periods of time; that this was necessary because the type of waste considered by the Commission in each instance consisted of the production of petroleum in the State of Oklahoma in excess of the reasonable market demand, and waste incident thereto, although in the establishment of all such rules and regulations other types of waste incident to and caused by the production of oil in said state over the reasonable market demand were also considered and by the orders of the Corporation Commission all such types of waste prevented. Defendants state that continuously since then, as will always be the case, they were dealing with a peculiar subject matter; that the extent of the state's production of crude oil over a considerable period in the future could never be exactly determined, and that such determination could be made only for a brief period in the future; that at the same time the demand for crude petroleum in the state at large or in any particular pool could not be accurately determined for any considerable period in the future. In other words, defendants allege that both production and demand, was contemplated by the Conservation Act, had to be determined for brief periods of time; that as a rule said rules and regulations were established for a three months' period and even then with a regulation to the effect that production might be increased or decreased during the three months' period by supplemental order of the Corporation Commission after hearing, depending upon the extent of the reasonable market demand; that the orders complained of were made under the conditions hereinbefore alleged in pursuance of the Conservation Act and not for the purpose alleged by the plaintiff. Defendants further aver that whether or not they shall make any further orders of the character complained of by the plaintiff shall depend entirely upon the

character of the petition, if any, that may be filed for further regulations to prevent the waste of oil, and upon due proof of the allegations of such petition before, the Com- [fol. 87] mission after notice of a hearing therefor given in pursuance of said Conservation Act; or, if no such petition be filed, whether defendants find from conditions in the oil fields in the state that they should nevertheless conduct a hearing for such an order.

33. They admit that subsequent to February 9, 1931, during a period of approximately 100 days, the plaintiff produced approximately 300,000 barrels of crude oil from its wells located in the Oklahoma City pool in excess of the amount which it would have been entitled to produce from said area under the act of Oklahoma Legislature approved February 11, 1915, and the orders of the Corporation Commission referred to in said bill of complaint and in this answer, but deny that plaintiff produced said 300,000 barrels of excess oil or any part thereof in order to test the constitutionality of the penalties prescribed in said Act of the Oklahoma Legislature, or by reason of the fact that the refineries of the plaintiff were in imperative need of crude oil which could only be supplied at reasonable cost from the wells of plaintiff. They allege that in and by this suit, instituted September 15, 1930, approximately five months before plaintiff commenced the production of said excess oil and without having violated the said law or orders to any substantial extent, plaintiff took steps to test the constitutionality of said penalties; and they further allege that it was and is wholly unnecessary for plaintiff to violate said law and/or orders in order to test it or their constitutionality. They further allege that in producing said excess amount of crude oil, complainant deliberately violated the said law and orders, notwithstanding the fact that this court by its order entered herein on the — day of October, 1930, and again by its order entered herein on February 9, 1931, sustained the constitutionality of said law and orders and denied a temporary injunction against the enforcement of said act and orders of the Commission pursuant thereto, and notwithstanding the fact that plaintiff has taken and perfected an appeal to the United States [fol. 88] Supreme Court from said order of February 9, 1931. They further allege that the plaintiff attempted to conceal from the defendant Corporation Commission and its members, agents, servants and employees the fact that

it was producing more oil from its said Oklahoma City wells than the amount allowed by the said orders of the said Commission, and that it succeeded in concealing the same from them until shortly before May 28, 1931, the latter being the date upon which the defendant J. Berry King, Attorney General of Oklahoma, filed in the District Court of Oklahoma County, the suit of the State of Oklahoma ex Rel. J. Berry King, Attorney General vs. Champlin Refining Company, Cause No. 68950, which is pleaded in paragraph XXXIV of said bill; and in this connection they further allege that plaintiff made reports from day to day and time to time to Otto Bradford, Umpire for the Oklahoma City field, of an amount of production from its wells that was within and which conformed to the allowable production thereof as fixed by said orders, and deliberately concealed from him and the defendants herein, and secretly overproduced said amount of approximately 300,000 barrles of excess oil from said wells. They admit the institution of the suit last above mentioned in the District Court of Oklahoma County, Oklahoma, and that in the petition filed in said suit the plaintiff therein sought the relief alleged by plaintiff in said paragraph XXXIV of its bill, and admit that temporary injunction was obtained as alleged in said paragraph of said bill. They admit that on June 13, 1931, this honorable court made and entered an order restraining the defendants herein as is shown in and by Exhibit "K" attached to the said bill of complaint. They further allege that the plaintiff executed its bond as provided by said order of June 13, 1931, and they allege that thereupon the defendant, J. Berry King, Attorney General, dismissed the said suit No. 68950. Defendants further allege that by reason of the facts herein before set forth relating to the said excess production from its wells in the Oklahoma City field, plaintiff is not in this court with clean hands and is not entitled to any relief at the hands of [fol. 89] this court, particularly to restrain the enforcement of the provisions of said law pending the ultimate determination of this suit, either in this court or on appeal to the United States Supreme Court, even if otherwise it might be entitled to an injunction restraining the enforcement of the penalties pending such final determination or pending such appeal.

Defendants deny that the penalties prescribed by said Oklahoma Statutes for a violation of the orders of the Cor-

poration Commission are void as to the plaintiff for any reasons assigned by the plaintiff and particularly in paragraph XXXIV of said bill or for any other reason or reasons. They deny that the penalties prescribed in said provisions of said statutes are so drastic that no owner of oil producing properties in the State of Oklahoma could invoke the jurisdiction of any court to test the validity of said Act and the orders, rules and regulations of said Commission made and entered pursuant thereto, except at the risk of confiscation of his or its properties and the incurring of the payment of large sums of money by way of fines and penalties and the emprisonment of such owner and its officers, agents and employees in jail or prison for long terms, and in this connection allege that said Act of February 11, 1915, provides for a judicial review of the orders, rules and regulations of the Commission made and entered pursuant to the provisions of said act without the necessity of first violating said Act and/or the said orders, rules and regulations, and that thereunder the right of judicial review is secured to any person, firm or corporation affected by any such orders, without the necessity of him or it first violating the said Act and/or any such orders, rules and regulations issued and promulgated pursuant thereto. They deny that Section 9 of said Act of February 11, 1915, or any other of the provisions of said Act, deprive the plaintiff of its property without due process of law, or that the same constitutes an unusual punishment or a bill of attainder.

[fol. 90] They deny that pending the final determination of plaintiff's appeal from the order of this court of February 9, 1931, the plaintiff will suffer great and irreparable or any injury by reason of its compliance with the said Act and the orders, rules and regulations of said Commission, and that the plaintiff will have been deprived of its property and the use thereof without remedy against the State of Oklahoma or the defendants herein or any of them. Defendants state that the said penalties are not enormous or severe when the amount thereof is compared to the value of the oil which may be produced from the wells of the plaintiff and the tremendous and inestimable waste which plaintiff would commit if its wells should be operated in violation of said laws and orders.

They deny that the institution of proceedings before the Corporation Commission under the provisions of Section 8 and 9 of the said Act or other proceedings will destroy plaintiff's financial credit and embarrass it in the operation of its business to its great loss or any loss, and that the same will otherwise work irreparable or any injury to the plaintiff.

34. Defendants state that if the plaintiff be deterred from violating the said orders pendente lite by fear of the imposition of said penalties, it will not thereby suffer any injury whatsoever in the loss of any recoverable oil from the lands covered by its leases, and this for the reason that the owners of wells on lands adjoining and in the vicinity of the plaintiff's wells are observing said orders and are not producing from the wells on their lands a greater proportionate part of the content of the reservoir than their respective ratable shares thereof as fixed by said orders, and are not draining oil from plaintiff's lands. They further allege that the loss to plaintiff by having to pay fines imposed by defendants under the penalty provisions of said statute for violations of the said orders during the pendency of this suit, would not be comparable to the much greater losses [fol. 91] which would be sustained by the owners of oil wells upon lands adjacent to and in the vicinity of plaintiff's wells due to drainage which would occur from their lands into plaintiff's wells, and the waste of gas energy to the great detriment of adjoining owners, if plaintiff's wells are operated to the extent which plaintiff alleges in its bill of complaint it desires to operate them; and in this connection they allege that the owners of wells in the neighborhood of plaintiff's wells are operating same in obedience to the said proration orders.

35. They admit that plaintiff filed on November 7, 1930, with the defendant Corporation Commission, its written special appearance and motion to vacate the rules, regulations and orders herein complained of and that in said motion it sets forth matters as alleged in paragraph XXXV of said bill, except that they deny that it set forth therein substantially all the facts and allegations contained in said bill; they admit that said motion contained the prayer as copied in said paragraph XXXV of said bill, and admit that said motion was heard by said Commission on No-

vember 20, 1930, was opposed by certain operators, and that on November 21, 1930, said Commission denied said Motion, but they allege that plaintiff took no appeal to the Supreme Court from said action of said Commission, but elected instead thereof to file an amended complaint, in this suit in this court.

36. With reference to the allegations of paragraph XXXVI of said bill of complaint, defendants state that they are not sufficiently advised to now assume a position on the question of law as to whether said orders are legislative acts of said Commission or are merely ministerial acts or quasi-judicial acts, and, hence, they deny that said Commission is the only tribunal provided by the laws of said state endowed with final, or any, legislative authority in making said orders; but they state that in any event, under the provision of Section 7 of said Oil Conservation Act (Sec. 7960 C. O. S. 1921), appellate jurisdiction is conferred upon said Supreme Court to review the action of said Commis- [fol. 92] sion in making any order or orders under said Act, and such appeal may be taken by any person, firm or corporation shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of said Commission; and said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by said Supreme Court; and under the provisions of Section 20, 21, and 22 of Article IX of the Constitution of Oklahoma (the first of which empowers the Legislature to provide, as it did by said Section 7 of said Act, for, appeals from actions of the said Commission in respect to matters other than those relating to transportation and transmission companies), the Supreme Court of said State has jurisdiction to review reverse, correct or annual any action of the Commission and, pendente lite, to suspend or delay the execution or operation thereof on appeal to it, the review to be upon the record made before the said Commission, including a consideration of the evidence introduced before said Commission and the reasons assigned by the Commission for the making of its order, rule or regulation so appealed from, and said Supreme Court has jurisdiction to consider and determine the reasonableness and justness of the action of the Commission appealed from, as well as any other mat-

ter arising upon such appeal, and may, before the appeal is finally decided require the Commission to take further and additional evidence to be certified to said court, the only limitation upon said court being that it shall regard the action of the Commission appealed from as prima facie, just, reasonable and correct, meaning, as interpreted by the Supreme Court of said state, only that the burden rests upon the party appealing to show that such order is not just, reasonable or correct and not that the order must be sustained if there is any competent evidence introduced before the Commission supporting it. On any such appeal [fol. 93] said Supreme Court is empowered to review and weigh the evidence, and decide all questions of law and fact. Therefore, the State law provides a fair opportunity for submitting all the issues by the plaintiff in its bill filed herein to a judicial tribunal of said state for determination upon its own independent judgment of all of said issues both at law and fact; and said remedy is substantial, adequate and safely available to plaintiff, and hence provides for plaintiff due process of law.

37. Answering the allegations of the Amendment to plaintiff's Third Amend*ment* and Supplemental Bill of Complaint, which amendment was filed herein on June 30, 1931, subsequent to the filing of said Third Amended and Supplemental Bill, defendants deny that the rules, regulations and orders of said Commission are unconstitutional and void under the Fourteenth Amendment to the National Constitution in that they treat all of the four separate producing sands in the Oklahoma City area as one common pool and deny that by so treating their sands said orders arbitrarily or otherwise discriminate against the producers, including the plaintiff who has wells in the most productive sands, and deny that said separate and distinct producing formations or structures cannot drain one another, and allege that there are a large number of oil wells drilled into said formations which penetrate and produce oil from more than one of said formations or structures, and that by said wells the said structures and formations have been connected and they further allege that there is no market for crude oil from any one of said producing sands as distinguished from the other, but that the Oklahoma City area, including each and all of said separate producing sands and formations, has a common market outlet and transportation and

marketing facilities that are common to the field as a whole. However, defendants allege that there is now pending before the defendant, Corporation Commission, an application by two of the producers in said area, supported by some of the other producers therein, and resisted by other of the producers therein, for a classification of producing formations and for an allowance of a greater production from some than from the others, and a distribution of the market demand for oil produced in the Oklahoma City pool [fol. 94] among the separate producing formations upon a basis which will allow a varied percentage of production from said several producing formations instead of one and the same percentage of allowable producing from each and all thereof, and that a hearing has heretofore been conducted by the defendant Corporation Commission upon said application, and evidence heard for and against the same, and evidence was adduced tending to show that by reason of the wells drilled into all of said formations, the same are not connected drawing oil from one formation to the other and utilizing the gas energy in one formation in producing oil from another; and that the defendant Corporation Commission now has said application under advisement and consideration and will in due course determine the same. They further allege that the plaintiff herein has never made application to the defendant Corporation Commission for any classification of the separate producing sands or formations in the said Oklahoma City field and that plaintiff herein, although notified of the hearing of the application made to the defendant Corporation Commission hereinabove mentioned, failed and neglected to appear at the said hearing or to participate therein.

Wherefore defendants pray that said Third Amended and Supplemental Bill of Complaint and this suit be dismissed at plaintiff's costs; that the said order of June 13, 1931, be vacated and set aside; and that defendants and each of them have all other relief to which they may be entitled, together with their costs herein laid out and expended.

J. Berry King, Attorney General of the State of Oklahoma. Jesse L. Ballard, Assistant Attorney General of the State of Oklahoma. E. S. Ratliff, Attorney for the Defendant Corporation Commission.

[fols. 95-119] *Duly sworn to by Paul A. Walker et al. Jurats omitted in printing.*

Exhibits not here reprinted, being included in their entirety in the volume of exhibits.

[fol. 120] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S REQUESTED FINDINGS OF FACT—Filed Aug. 18, 1931

Comes now the Champlin Refining Company, a New Mexico Corporation, plaintiff in this cause, and respectfully requests this honorable court to make the following specific findings of fact in determination thereof.

[fol. 121] (1) That the Champlin Refining Company is a corporation, organized and existing under the laws of the State of New Mexico, and by reason thereof, a citizen of that state; that it has complied with the laws of the State of Oklahoma, regulating the admission of foreign corporations within the said State of Oklahoma; is now, and for a long time prior to the filing of this suit has been, authorized and admitted to do business within the State of Oklahoma, with its principal place of business in the City of Enid, Garfield County, Oklahoma; that the matter herein in controversy is in excess of Three Thousand and no/100 ($3,000.00) Dollars, exclusive of interest and costs, and arises under the Constitution of the United States of America;

(2) That the defendants, Paul Walker, E. R. Hughes, and C. C. Childers, the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma, the defendant J. Berry King, the duly elected, qualified and acting Attorney General of the State of Oklahoma, and Lewis R. Morris, the duly elected, qualified and acting County Attorney within and for Oklahoma County, Oklahoma, are all citizens of the State of Oklahoma, with their

places of residence and official domiciles within the Western Federal Judicial District thereof;

(3) That the Corporation Commission of the State of Oklahoma is a board created and vested with certain powers, by article 9 of the Constitution of the state of Oklahoma; that the defendants, Paul Walker, E. R. Hughes and C. C. Childers, are the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma; that at all times herein mentioned prior to January 10, 1931, the defendant Fred Capshaw, was a duly elected, qualified and acting member of the Corporation Commission of the State [fol. 122] of Oklahoma; that his term of office as such member of such board, expired on the 10th day of January, 1931; that Paul Walker, having been duly elected as the successor in office to the said Fred Capshaw, as a member of said Corporation Commission, qualified as such member thereof, on the 10th day of January, 1931, and since then has been, and now is, a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma; that subsequently an order was entered in this cause, permitting it to be continued and maintained against Paul Walker as the successor in office to the defendant, Fred Capshaw, as a member of the Corporation Commission of the State of Oklahoma, and substituting the said Paul Walker as a party defendant in lieu of the said Fred Capshaw, in said cause;

(4) That the Champlin Refining Company is now, and since its incorporation, has been, engaged in the business of producing, refining, transporting and marketing crude oil and its by-products, in interstate and intrastate commerce, thereby being identified in the industry, as an integrated company, as distinguished from a non-integrated company producing crude oil only;

That it owns and operates a refinery at Enid, Oklahoma, with a refining capacity of approximately 15,000 barrels of crude oil per day; that it manufactures in said plant, 106 types of products (plaintiff's Exhibit #13, Rec., p. 103); that it owns approximately 735 tank cars, which it uses in interstate commerce, in the distribution of its refined products, among its customers, in Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California; that it owns, controls and operates,

[fol. 123] approximately 470 miles of pipeline for the transportation of crude oil within Oklahoma and states adjacent thereto; that it owns and operates 263 retail gasoline filling stations in conjunction with 256 wholesale or bulk gasoline stations within the States of Oklahoma, Kansas, Texas, Iowa, Colorado, Illinois, Nebraska and Missouri; that the properties of the plaintiff corporation, represent an investment cost as follows:

Refinery	$3,840,038.93
Pipelines	3,146,228.48
Tank cars	1,295,202.21
Filling stations within Oklahoma	1,738,731.40
Filling stations outside Oklahoma	1,357,950.48
Total Investment	$11,378,151.50

(Plaintiff's Exhibit #28, Rec., p. 239);

(5) That the plaintiff corporation is the owner and holder of the oil, gas and mineral mining leases set forth upon pages 4 and 5 of its Third Amended and Supplemental Bill of Complaint, in what is generally known as the "Oklahoma City field"; that it is also the owner of an oil, gas and mineral mining lease on

The East Half of the Southeast Quarter of the Northeast Quarter of Section 14, Township 7 North, Range 6 East, and an undivided one-half interest in the South Half of the Southwest Quarter of Section 9, Township 6, Range 6, all lying in Seminole County, State of Oklahoma,

and in what is generally known as the "Greater Seminole field"; together with many other oil, gas and mineral mining leaseholds, in other parts of the State of Oklahoma;

(6) That the plaintiff Corporation has drilled nine (9) wells to completion, upon the above described leasehold [fol. 124] properties in the Oklahoma City field, at an average cost of approximately $125,000.00, which wells have an aggregate potential capacity of 151,000 barrels of crude oil per day, measured in the manner adopted by the Corporation Commission of the State of Oklahoma for the determination of potentials; that the plaintiff Corporation is drilling a tenth well in said Oklahoma City field, which will cost approximately $140,000.00, and by reason of its location in

the prolific Wilcox area, may reasonably be expected to be an oil well;

That the total investment in the drilling of the said wells in said Oklahoma City field, in approximately the sum of $1,265,000.00, is in addition to the plaintiff's investment in fixed assets, in the total sum of $11,378,151.50, as hereinbefore found (plaintiff's Exhibit No. 27, Rec., p. 239);

That a pipeline of eighteen thousand barrels daily capacity, has been completed and placed in operation by the plaintiff Corporation, connecting the plaintiff's said wells upon the foregoing described leaseholds, with its refinery at Enid, Oklahoma, a distance of 87 miles;

That the plaintiff Corporation has been for some time past, and now is, operating its refinery at 85% capacity (Rec., p. 104), and did market in Interstate Commerce in the year 1930, one hundred eleven million, six hundred sixty-nine thousand, five hundred eighty-five (111,669,585) gallons of refined products, of a sales value of $6,752,274.31 (Exhibit No. 25, Rec., p. 237); and during the like period of time, did market within the State of Oklahoma, in like refined products, fifty million, four hundred nine thousand, nine hundred twelve (50,409,912) gallons, of a sales value of $2,200,798.01 (Exhibit No. 25, Rec., p. 237); and that during the first five months of 1931, did market in Inter-[fol. 125] state Commerce thirty-eight million, five hundred seventy-four thousand, eight hundred ninety-five (38,574,985) gallons of like refined products, of a sales value of $1,540,186.72 (Exhibit No. 25, Rec., p. 237); and did market in the like period, within the State of Oklahoma, fourteen million, five hundred twenty-nine thousand, eighty-four (14,529,084) gallons of like refined products, of a sales value of $438,126.12 (Exhibit No. 25, Rec., p. 237; see also plaintiff's Exhibit No. 27, Rec., p. 239);

That the plaintiff Corporation on June 24th, 1931, had in storage 52,393 barrels of gasoline (Rec., p. 101), and 75,964 barrels of crude oil (Rec., p. 101) with the refinery using 16,000 barrels of crude oil daily (Rec., p. 101);

(7) That the plaintiff Corporation has not run any crude oil produced in its Oklahoma City field wells to above ground or other storage, that it has not physically wasted any crude oil which it has produced in the Oklahoma City field, or in any other field; that it has not used any artificial means to increase the flow in any well in the Oklahoma City

field; that it has a market demand for all refined products that it can obtain from the daily capacity of its pipe lines from said wells in the Oklahoma City field, so owned by it, to its refinery at Enid, Oklahoma, and will in the manufacture thereof use frugal care to prevent loss in the crude oil so utilized;

(8) That at the time the plaintiff Corporation constructed its pipeline (which was one of the first built into the Oklahoma City field) and commenced to drill its wells, the allowable production in said field under the administrative orders of the Corporation Commission, was twenty-five (25%) per cent of its potential; that in reliance upon the warranted belief, that discrimination as between fields, [fol. 126] would not be later practiced under proration, by agents of the state, the plaintiff Corporation did invest more than Two Million ($2,000,000.00) Dollars, in said pipelines and wells;

(9) That modern, all-steel, above ground storage is not wasteful of crude oil, within the most restricted definition of conservation, that such type of storage will conserve oil with "practically no loss" (Rec., pp. 89 and 102); that on 38° to 40° Baume Oklahoma crude oil, the loss in such type of storage in the first year would be about one (1%) per cent when stored in 80,000-barrel tanks (Rec., p. 90; see also Rec., p. 102); that such type of tank will last twenty to thirty years, and will cost 25¢ per barrel when completed (Rec., p. 91), that the loss by evaporation or otherwise, during the second year, will be 8/10 of 1%, third year 7/10 of 1%, with a correspondingly diminishing loss each year thereafter; that in five years the total loss would be not more than 3½% to 4% (Rec., p. 92); that the loss in steel gas tight storage tanks in a year's storage from a refining standpoint is negligible (Rec., p. 103);

(10) That before any of the orders of the Corporation Commission herein complained of were made or promulgated, the plaintiff Corporation had drilled and equipped nine (9) wells on its leasehold properties in the Greater Seminole field at an approximate cost of $569,000.00; that said wells so drilled in that area had on the 15th day of September, 1930, a potential capacity of 450 barrels of crude oil per day;

(11) That the plaintiff Corporation owns and operates oil and gas leaseholds in the State of Oklahoma in fields other than those above described which are also affected by the orders of the Corporation Commission of the State of Oklahoma, which other producing properties have a potential capacity of approximately 1200 barrels of crude oil per day;

[fol. 127] (12) That at or about the time of the passage of the act in question, and its subsequent approval, there existed in the State of Oklahoma an overproduction of crude oil, and the Corporation Commission concerned itself with an attempted regulation thereof;

(a) That on the 22nd day of September, A. D. 1914, the Corporation Commission entered its order No. 846, cause No. 2041, being a voluminous opinion by the Commission, in the matter of production of crude oil in excess of market demand (plaintiff's Exhibit No. 39, Rec., p. 283); and thereafter (p. 20 of the exhibit) ordered:

"that all producers shall not take more oil from their wells than can be sold upon the market at 65¢ per barrel, or stored in regulation steel tankage,"

thereby finding that to store oil in regulation steel tankage, was not wasteful within the spirit of the times that brought about the legislation being here considered.

(b) That on the first day of October, 1914, the Corporation Commission issued its order No. 847, cause No. 2041, (plaintiff's Exhibit No. 37) adjudging that:

"no producer in the Healdton field, shall take any oil from the oil sands of that field for sale, at a price less than 50¢ per barrel, until such time as the conditions can be fully investigated by the Commission, and no common purchaser or other person, shall purchase oil hereafter taken from the oil sands of the Healdton field, at less than 50¢ per barrel, until such time as the Commission can hear and determine the necessities for the less price.

"All parties having storage oil are hereby notified that if the same is sold at less than 50¢ per barrel without permission of the Commission, after an investigation as to

the quantity of the oil, same will be prorated against their runs through the pipelines."

[fol. 128] (c) That on February 18th, 1916, after the passage of the Conservation Act of the State of Oklahoma, the Corporation Commission had before it the matter of the placing — oil in steel storage, and in the sixth subdivision of its order of that date (plaintiff's Exhibit No. 40, Rec., p. 283), the following only objection to such practice was found:

"That this (the utilization of steel storage) aggravates the situation, as the small producers are unable to furnish storage. These producers unable to store oil, will be compelled to accept any price or lose their prorata of oil from the common pool, thereby causing great economic loss";

thus finding that such storage in steel above ground, was not wasteful, and was objectionable only from the standpoint of the cost of storage to the small producer;

In that same order, an opinion of the Corporation Commission, that section 2 of chapter 25 of the Session Laws of 1915, supra (page 4 of the order, plaintiff's Exhibit No. 40, Rec., p. 283), was held to be without effect "because it was impracticable to fix a price of oil based upon market or commercial conditions," following the previous order No. 846 of the Corporation Commission in cause No. 2041 (plaintiff's Exhibit No. 39; Rec., p. 283); it being further there held "that the only theory upon which the state could fix the price of a commodity, was to prevent extortion upon the same theory, and under the same law and the same Constitution that the price for the loan of money is fixed by statute";

The Corporation Commission in that order, further found and held that:

"The Commission finds the evidence in this case to be insufficient upon which to base a conclusion as to the value of crude oil based upon the selling price of refined products. At the time the complaint was filed, oil in the Heald-[fol. 129] ton field was selling at 35 cents per barrel. It is now (outside of the record) selling it at from 75 cents to $1 per barrel. The by-products fluctuate in price, whether because of increased demand or because the price

may be influenced by monopoly may not in all instances be easily determined. If the price of the by-products should be advanced at some time when the demand was greater than others, under the theory of this law the price of crude oil would be advanced, and it would make it impossible to reduce the price of the refined product, and have the effect of increasing the refined products to the consuming public, when the relation between the crude oil and refined oil was established by the Commission, if such a thing were possible.

"Without going into all the details of the evidence with reference to the relative value of the Healdton oil with other oils, we are of the opinion that the fixing of a price of crude oil under Sec. 2 of this act is absolutely impossible and impracticable. The complaint is therefore dismissed."

(d) That the Corporation Commission of Oklahoma in its order No. 920, cause No. 2287, entered June 15, 1915, offered in evidence by the defendants at the time the cause was argued on the 3rd day of August, 1931, found in the ninth subdivision thereof that:

"The storage of oil by any common purchaser or purchasers, bought ratably in open market bona fide to be held as stock under the usual custom of the trade, for the purpose of refining or for sale (of) the consumer is not prohibited by the rules hereinbefore prescribed."

(e) That the Corporation Commission by its order No. 846A, cause No. 2041 (plaintiff's Exhibit No. 37, record, page 282) undated but between September 22nd, 1914 (No. 846, Rec., p. 283), and October 1st, 1914 (No. 847, Rec., p. 282), found that "no corporation, firm or individual [fol. 130] shall take oil from the oil sands of Oklahoma when same cannot be sold at a price not less than 55 cents, and no individual, firm or corporation shall purchase oil in Oklahoma at a less price than 55 cents until further order of the Commission;"

(f) That the first order of the Corporation Commission bearing directly upon the present operation of proration in Oklahoma was entered on June 30th, 1930, numbered 5189 (plaintiff's Exhibit No. 33, record, page 281), and

among other things names Ray M. Collins "umpire and agent of the Corporation Commission to enforce the rules and regulations herein made, and he is hereby authorized to employ as many assistants as he shall deem necessary. To assist the umpire in administering these rules and regulations the following Committee of Operators are appointed as agents of the Corporation Commission for the following named pools":

Greater Seminole:

J. S. Sidwell, Prairie;
J. J. Conry, Carter;
R. F. McArthur, Barnsdall;
Kenneth Winship, Gypsy;
L. C. Hawkins, Magnolia.

Oklahoma City:

M. J. Kirwan, I. T. I. O.;
J. S. Sidwell, Prairie;
Wirt Franklin, Cromwell-Franklin;
Ralph Roark, Shell;
Glenn Harroun, Sinclair.

"It is therefore ordered * * *

"Beginning July 1, 1930, and continuing until and including September 30th, 1930, the production of all wells in the following pools shall be curtailed 33⅓% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro [fol. 131] Townsite, Little River, East Little River, Marshall-Lovell, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis."

"Beginning July 1st, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pools as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 25 percent of potential production; and, provided, further, that whatever demand for petroleum from the Oklahoma City pool that may exist shall be prorated and allocated among all the

producing leases. In case the reasonable market demand shall at any time be less than 25% of the potential production the umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand."

* * * * * * *

"That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission."

(g) That thereafter on July 24th, 1930, the Corporation Commission entered its order #5246 (plaintiff's Exhibit #33, Rec., p. 281) and among other things found that,

"That since the issuance of the original order herein the potential production of crude oil in the State of Oklahoma has increased to 1,400,523 barrels per day, while the reasonable market demand has decreased from 650,000 barrels to 550,000 barrels per day, a decrease of 100,000 barrels in daily average demand since June 30th."

"That it is, therefore, necessary to further curtail the output of crude petroleum in Oklahoma in order to prevent waste as defined by the laws of this state, and that the original order herein should be modified by reducing the [fol. 132] percentages of permitted production in the pools herein mentioned by 25% according to the following schedule:

Production thereupon allocated in said order:

	July, 1930		August, 1930	
	Estimated potential	Estimated production	Estimated potential	Estimated production
Greater Seminole area 50%	305,712	152,856	290,861	145,431
Earlsboro 25%	94,046	25,931	75,000	23,750
West-Asher, et al., 18¾%	139,765	26,206	123,000	23,063
Oklahoma City 14% (approximately)	600,000	84,007	600,000	94,756
Wells, in prorated	10,000	10,000	10,000	10,000
Total prorated areas	1,149,523	299,000	1,098,861	297,000
Outside areas not prorated	251,000	251,000	253,000	253,000
Total state	1,400,523	550,000	1,351,861	550,000

With the following conclusion thereon:

"The Corporation Commission further finds that by applying a uniform percentage reduction of the original percentages named in the order of June 30th, the said pro-

rated pools will be maintained in the same relation to each other as under said original order, and that unfair discrimination as between said pools and as between the leases therein will be prevented, and that the adoption of said schedule set forth in paragraph (d) is necessary in order to prevent waste of petroleum."

"It is therefore ordered, * * *

"Beginning July 15, 1930, and continuing until including August 31, 1930, the production of all wells in the following pools shall be curtailed 50% of their potential production; Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis."

"Beginning July 15, 1930, and continuing until and including August 31, 1930, the allowable production of all [fol. 133] wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 18¾% of potential production; and provided, further, that whatever demand for petroleum from the Oklahoma City pool that may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 18¾% of the potential production the umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand."

* * * * * * *

"That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission."

(h) That thereafter on August 30th, 1930, the Corporation Commission entered its order No. 5292 (plaintiff's Exhibit No. 33, Rec., p. 281) upon the application of Ray M. Collins, and among others things found:

"That it is, therefore, necessary to further curtail the output of crude petroleum in Oklahoma for the month of

September, 1930, in order to prevent waste as defined by the laws of this state, and that the original order herein should be modified by reducing the percentages of permitted production in the pools herein mentioned by 25% according to the following schedule:

"Production thereupon allocated in said order:

[fol. 134]

	September, 1930	
	Potential estimated	Production estimated
Greater Seminole Area 50%	293,268	146,634
Oklahoma City 12½% (approximately)	700,000	88,903
Earlsboro 25%	75,000	23,750
West Asher & Konawa 18¾%	103,000	19,313
Tatums, et al.	44,850	6,400
Wells in Prorated Areas not prorated	5,000	5,000
Total Prorated Areas	1,221,118	290,000
Outside Areas (not prorated)	260,000	260,000
	1,481,118	550,000

thus constituting a finding that Oklahoma City with one-half of the state's estimated potential is allowed approximately 12½% of its production, for the month of September, 1930:

That said order thereupon finds:

"That by applying a uniform percentage reduction of the original percentages named in the order of June 30th, and said prorated pools will be maintained in the same relation to each other as under said original order, and that unfair discrimination as between said pools and as between the leases therein will be prevented, and that the adoption of said schedule set forth in paragraph (d) is necessary in order to prevent waste of petroleum."

• • • • • • • •

"That accordingly these conditions of waste now exist in said pools or are imminent and such waste should be prevented."

"It is therefore ordered, • • •

"Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in

[fol. 135] the following pools shall be curtailed 50% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis,"

"Beginning September 1, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 18¾% of potential production; and, provided further, that whatever demand for petroleum from the Oklahoma City pool may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 18¾% of the potential production the umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand."

"That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission."

(i) That on September 30th, 1930, the Corporation Commission entered its order No. 5337 (plaintiff's Exhibit No. 33, record, page 281) extending in force its previous orders Nos. 5189, 5246, 5292, and all supplemental orders thereunder, and thereafter on October 6th, 1930, entered its findings of fact, opinion and order No. 5343 (plaintiff's Exhibit No. 33, record, page 281) to the effect that:

"That by reason of the matters stated above, there are now approximately twenty producers who do not have pipe line connections and who are under-produced under the [fol. 136] terms of said order; that, as nearly as can be estimated, the total amount of under-production within the terms of said order in the Oklahoma City field, is approximately 1,209,000 barrels as of September 25th, 1930, and that the additional amount which has been produced within the terms of said order which has not been run and is in storage on the leases amount to 1,333,000 barrels, making a

total of under-run and under-produced oil of 8,542,000 barrels."

"It is therefore ordered . . .

"That all new wells being brought on production produce for a period of eight hours for test, that the remainder of the twenty-four hour test period (namely sixteen hours) be allowed the said well upon its completion of its sixty-five day shut down time; that all wells that are now serving their sixty-five day shut down time, be permitted to produce a maximum of eight hours in each twelve-day period following the completion of their sixty-five day shut down time; that all wells that are now on production schedule be likewise permitted to produce a maximum of eight hours in each twelve-day period; that the amount of time that wells in the Oklahoma City field are permitted to produce during each twelve-day period should be revised when the wells that are now under-produced and the oil that is now in storage has been run to the pipe lines."

(j) That on October 10th, 1930, the Corporation Commission entered its order No. 5345 (plaintiff's Exhibit No. 33; Rec., p. 281), extending in force its previous orders Nos. 5189, 5246, 5337 and 5343, and all supplemental orders thereunder, until October 20th, 1930, and thereafter on October 28th, 1930, entered its order No. 5369 (plaintiff's Exhibit No. 33; Rec., p. 281), and among other things found:

"The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and [fol. 137] that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

"The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to

reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,800,000 barrels per day. That by reason of this great over supply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions and unless there is a continuance of curtailment of production in the areas involved herein, the conservation measures now in effect in the other oil producing states may be abandoned, thus causing large quantities of petroleum to be produced in such other states in excess of their local demand and forced upon the market to the demoralization of the industry and a consequent increase in waste in this state and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation constitutes a great state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same."

[fol. 138] "The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 685,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless potential production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted. The Commission further finds that the storage of oil in Oklahoma under existing conditions would involve waste for the further reason that there is already an excess of stored oil locally and, there being an over-supply, oil now

stored would have to remain in storage for a great length of time and would deteriorate."

"The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be necessary to enforce proportionality of taking from the wells and leases in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and undue proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools."

"The Commission further finds that the potential daily production of crude oil from the wells in Oklahoma during [fol. 139] the month of October, 1930, is and will be approximately 3,638,478 barrels and that during the months of November and December, 1930, the said potential daily production will be 4,142,872 barrels and 4,244,294 barrels respectively, and that the daily demand for crude oil from Oklahoma is and will be approximately 550,000 barrels in October, 545,000 barrels in November, and 535,000 barrels in December, 1930. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste."

* * * * * * *

And thereupon allocates production within the state in the following manner:

	October, 1930		November, 1930		December, 1930	
	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Class "A" Pools:						
Defined as all pools in State not heretofore prorated (page 12 of order)	259,280	202,965	257,040	201,770	254,950	200,725
Class "B":						
Greater Seminole area	277,433	138,716	268,752	134,375	259,950	129,975
Class "C":						
Earlsboro	58,415	15,935	58,965	16,033	58,510	15,880
Class "D":						
Konawa	89,500	18,188	88,365	17,933	84,234	17,117
Class "E":						
Asher-Wanette	95,000	22,200	88,000	22,200	81,000	22,200
Class "F":						
Tatums, et al	43,000	6,500	40,000	6,500	37,000	6,500
Class "G":						
Perry and Orlando	2,850	1,400	2,750	1,400	2,650	1,400
Class "H":						
Oklahoma City	2,800,000	131,095	3,319,000	134,589	3,446,000	131,003
Wil-cat wells	3,000	3,000	10,000	200	10,000	200
For testing	5,000	5,000	5,000	5,000	5,000	5,000
Unprorated small wells in prorated areas	5,000	5,000	5,000	5,000	5,000	5,000
Total	3,638,478	550,000	4,142,872	545,000	4,244,294	535,000

[fol. 140] That in the making of the foregoing proration schedule, identified as (f) in said order, the Commission finds, that:

" • • • the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply.

"The Commission finds that the basis of classification of pools for the application of the varying percentages of curtailment as shown by the schedule in paragarph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can be produced from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste."

• • • • • • •

(Page 5 of order.)

And further finds that:

" • • • and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the 'Class A' pools herein to the Oklahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that [fol. 141] for this purpose the umpire and Operators' Committee should be instructed to compute from time to time,

the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; * * *" (Page 7 of order.)

And did further find that:

"(k) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said state as a whole, and the resulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full production from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefore finds that all wild-cat wells or wells opening new pools, sands or zones completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

"The Corporation Commission has examined many witnesses in this case, and has afforded an opportunity for everyone interested to be heard. There has been some contention that proration of the Oklahoma oil pools is a scheme or device to limit production and to maintain the price of crude oil, but this Commission asserts that its orders have been and are now based solely upon the purpose to prevent waste of crude oil in the various oil pools of the state, and, in the process of so doing, to require ratable or proportional taking from each of the wells in a common source of supply or pool where curtailment of production from the pool as a whole is necessary to prevent waste, and that this Commission has exercised its independent judgment in prescribing the proration orders, and has not attempted to [fol. 142] influence price of crude oil or refined products, and that if any such effect has occurred it is purely incidental and not intended. In this connection the Commission finds that from 65% to 75% of the crude oil sold from the wells in Oklahoma is sold to refiners and purchasers who take it outside of the State of Oklahoma, and which oil so sold goes into the world market for petroleum in competition with crude oil from Venezuela, Mexico, Colombia, Peru, California, New Mexico, Kansas, Texas, Louisiana,

Arkansas, and other producing areas, and that the price at which it is sold is fixed, not by this Commission, but by the free play of competition and by the relation between supply and demand in the said world market; that the market price for said oil is evidenced by the price regularly posted and offered by the principal purchasers of oil, and that practically all of the oil that is sold in Oklahoma is sold at said regular posted market price, and that there is no evidence that proration in Oklahoma has had any effect upon said price."

. . . . . .

(Page 8 of order.)

And did further find, that:

" . . . from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of oil producing business in this and other sur- [fol. 143] rounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical of market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of

them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order." (Page 9 of order.)

* * * * * * *

"It was therefore ordered, that:

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"Ray M. Collins is hereby appointed as umpire and agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

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"Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven a. m. on the day set by the order of the Commission, and seven a. m. on the following day. Prior to the taking of such gauge and in respect of each [fol. 144] producing lease covered hereby the umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the

day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this order is in force a similar gauge of each property shall be taken from time to time as the umpire and Operator's Committee may designate but not less than once each month, except that in the entire Gerater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the 'Class A' pools, the gauge may, upon direction of the umpire, be determined by applying the proper decline curve for each lease so gauged."

* * * * * * *

"The Commission may, by ancillary order, temporarily reduce the allowable percentage of production for any pool upon the recommendation of the umpire and Operators' Committee that it is necessary to do so in order to allow producers who may be under-produced to catch up with their respective quotas." (Pages 10 and 11 of order.)

* * * * * * *

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"That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid [fol. 145] or abet producers in violating this order by purchasing or carrying oil produced in violation of these orders of the Commission." (Page 12 of order.)

* * * * * * *

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"* * * The umpire and Operators' Committee are directed to compute the percentage of proration from time to time as found necessary to conform the permitted production to the reasonable market demand and to report their findings to the Commission as a basis for an ancillary order.

"It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be pro-

rated and allocated among all the producing wells, so that each well shall receive its pro rata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the umpire in so arranging pipeline connections that there shall be no discriminations in favor of one producer and against another." (Page 15 of order.)

(k) That thereafter, on the 3rd day of November, 1930, the Corporation Commission entered its findings of fact, opinion and order No. 5374, modifying and supplementing order No. 5369 (both a part of plaintiff's Exhibit No. 33, Rec., p. 281), in the following principal particulars, to-wit:

"• • • • • • •

"Third. That it is necessary in order to equalize the ratable taking from the Oklahoma City oil pool and to equalize the opportunity of each producer in said field to produce and market his prorated share of oil produced from said pool, that order No. 5369 be supplemented and modified by requiring the over-produced wells and the evenly produced wells be shut in and the production curtailed until such time as the under-produced operators and wells shall have had opportunities through pipeline facilities [fol. 146] and marketing facilities, to make up such underproduction in the ratable taking from said field." (Page 2 of order.)

• • • • • • •

"Sixth. Oil in storage representing under-run production which any operator has heretofore been entitled to produce and market, shall be considered as oil which the producer and owner is entitled to run, transport and dispose of under the terms and provisions of this order." (Page 3 of order.)

(l) Thereafter, on the 4th day of December, 1930, the Corporation Commission entered its order No. 5396 (plaintiff's Exhibit No. 33, Rec., pp. 281), the material portions of the findings therein being as follows:

"• • • It has also been suggested at different times, without dissention or dispute, that certain operators in the

Oklahoma City pool have produced their wells by the method commonly termed 'stop-cocking'; that is, by using the time allotted to any given lease in the production of the wells by heads and not continuously for the period of time allotted to the lease or to the well. This method of production, it is agreed results in an unfair taking from numerous wells in the field, as compared to the taking of other wells which are operated on an even time basis—that is, by opening the well and allowing it to stay open and flow continuously for the period of time during which it is entitled to flow under the time basis of proration." (Page 1 of order.)

The Commission thereupon proceeds to find:

"* * * * * * *

"Second. * * * in the event a well which is making up under-production under the terms and provisions of order No. 5374 adopted November 3, 1930, is not able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then and in that [fol. 147] event such well shall not be charged with the full period, but shall be charged with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such well was unable to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as hereinabove provided." (Page 2 of order.)

"It is therefore ordered, that:

* * * * * * *

"Wells under-produced more than four hours, shall be entitled to make up such underage in 4 hour-periods to be computed as above provided. If any such underproduced well, in making up its underage, comes to a point when its underage is less than four hours, then such remaining underage shall be taken continuously, provided, in the event a well which is making up under-production in pur-

suance of order No. 5374, entered herein on November 3, 1930, is not able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then and in that event such well shall not be charged with the full period, but shall be charged with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such well was able to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as hereinabove provided." (Page 4 of order.)

(m) That thereafter, on the 30th day of December, 1930, the Corporation Commission entered its order 5413, extending and modifying order No. 5369 (both a part of plaintiff's Exhibit No. 33, Rec., p. 281), and among other things found:

"* * * * * * *

[fol. 148] "(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 670,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted." (Page 2 of order.)

And thereupon the following allocations of production were made for the months of January, February and March, 1931:

	Estimated potential	Maximum potential demand	Estimated probable demand
January:			
Class A	247,000	217,000	175,905
Oklahoma City	5,338,298	85,000	85,000
Outside	616,921	204,095	204,095
Total State	6,252,219	506,095	465,000
February:			
Class A	243,295	213,615	176,175
Oklahoma City	5,838,804	90,000	90,000
Outside	604,465	202,825	202,825
Total State	6,686,564	506,440	469,000
[fol. 149] March:			
Class A	239,646	210,646	180,636
Oklahoma City	6,411,459	90,000	90,000
Outside	611,972	199,364	199,364
Total State	7,263,077	500,010	470,000

Page 4 of order.)

* * * * * * *

"(6) * * * The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipelines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission, with a consequent greatter reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water condi-

tions prevent as great curtailment as is possible in others, and that in certain pools there is a more in[illegible]nsive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to [fol. 150] reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply under present circumstances." (Pages 6 and 7 of order.)

* * * * * * *

"(k) The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time, and during January, 1931, is and will be approximately 85,000 barrels per day, and that in the month of February, 1931, said reasonable market demand from said pool will be approximately 90,000 barrels per day and that in the month of March, 1931, the reasonable market demand from said pool will be 90,000 barrels per day and that the market demand herein named is subject to increase and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well or lease will be permitted to

produce its proportionate share of the amount of oil that may be produced from said field without waste." . . . (Page 8 of order.)

. . . . . .

[fol. 151] "The Oklahoma City operators have petitioned this Commission for permission to change the method of proration in said pool from the time basis to the basis of percentage of daily potential production and this Commission's rules and regulations with reference thereto are embodied in a separate supplemental order this day issued. Proration of the Oklahoma City pool has heretofore been on the time basis because the operators requested it and because there was no practicable way of taking accurate gauges as a basis for proration by the percentage of potential method, there being no facilities for handling the oil that would be produced while the gauge was being taken. But the Commission now finds that a reasonably accurate gauge of potential production may now be taken and that under the circumstances as they now exist percentage proration would be better for the field in regard to reducing the possibility of waste" (page 9 of order).

"It is therefore ordered, . . .

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"Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the

gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion [fol. 152] of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this order is in force a similar gauge of each property shall be taken from time to time as the umpire and Operators' Committee may designate but not less than once each month. Such open gauges shall be taken in the following pools: Wewoka (Section 30 and Townsite), East Earlsboro, South Earlsboro, Section 29-9-6 (West Seminole), the flush wells in the Carr City pool located in Sections 2 and 3, Twp. 8, Range 5, and the flush wells in the Tatums pool.

"On the basis of open gauges heretofore taken in East Little River, Konawa, West Asher-Wanette, Earlsboro Townsite and Sasakwa, the potential production shall be declined 5% per month until further order of the Commission. On the basis of gauges already taken of the Wilcox sand wells of the Allen pool, the potential shall be declined 3% each month, with the exception of the Sinclair-Cully 'A' Lease, Blackwell Fleet lease and the Texas-Lewis lease, which shall be declined 5% per month, and the Texas-Dinah lease, which shall be declined 10% per month; all other wells in the pools of the Greater Seminole area shall be declined 3% a month" (pages 10 and 11 of order).

. . . . . .

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"That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this order" (page 11 of order).

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"Class H Pools.—The Oklahoma City pool. The Cor- [fol. 153] poration Commission temporarily nominates for

the Oklahoma City pool an outlet of 85,000 barrels per day in January, 1931, 90,000 barrels per day in February and 90,000 barrels per day in March. This nomination of the total permitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the Commission finds from evidence that a greater or less reasonable market demand obtains. On the basis of the potential production of the field now reported to the Commission of 5,388,298 barrels per day, the temporarily nominated outlet of 85,000 barrels per day will require a proportional taking of 1½% from the potential production of each well or lease. This percentage shall be put in effect at 7 A. M., January 3, 1931, but the umpire and Operators' Committee are directed to immediately begin the taking of gauges in said field according to the supplemental order this day issued and to compute the percentage of allowable from time to time as found necessary to conform the permitted production to the reasonable market demand, and to report as soon as possible their findings to the Commission as a basis for an ancillary order revising such permitted percentage. Any person interested in said pool may also report to the Commission any evidence of the need for a changed percentage. All orders heretofore issued applicable to the Oklahoma City pool, and now in force and effect, are hereby extended in full force and effect until 7:00 A. M. January 3, 1931. From and after said date and hour the percentage of allowable production herein fixed for the Oklahoma City pool shall be applied according to and as modified by order No. 5413 this day issued which applies to the Oklahoma City pool alone" (pages 13 and 14 of order).

And,

(n) Thereafter, on December 30th, 1930, the Corporation Commission of the State of Oklahoma, entered its Order 5414 (plaintiff's Exhibit No. 33; Rec., p. 281), and among other things therein found:

. . . . . .

[fol. 154] "(c) That conditions which have heretofore prevailed rendering it inexpedient to apply the percentage

proration plan to the Oklahoma City pool, particularly lack of facilities to make a proper gauge of potential for the application of percentage proration, have now become sufficiently modified that a reasonable percentage plan of proration can be applied.

(4) That under the proration plan now in operation in the Oklahoma City pool, the basis upon which the time of opening and closing the wells has been a fixed number of hours in each 12-day period. The present period will come to an end at 7:00 A. M., January 3, 1930, and for the efficient operation of the plan this order should become effective as of that date and hour" (pages 1 and 2 of order),

and in subdivisions 1 and 6, inclusive, of said order, made the following findings of method of taking potentials upon percentage basis:

"From and after 7 o'clock A. M., January 3, 1931, and until otherwise ordered by the Corporation Commission, such ratable production of oil from the Oklahoma City pool and such proration among the wells in said pool of the reasonable market outlet for said pool as may from time to time be ordered by the Corporation Commission, shall be applied in accordance with the following plan, to-wit:

1

"(1) The period commencing at 7 o'clock A. M., January 3, 1931, and ending at 7 o'clock A. M. on the first day of April, 1931, shall constitute the first potential period, and each three consecutive calendar months thereafter, commencing at 7 o'clock A. M. on the first day of the first month of said three months' period and ending at 7 o'clock A. M. on the day following the last day of the third month shall constitute a potential period.

[fol. 155] "(2) As to each well in the pool, the first potential determined during any potential period shall constitute its tentative potential for that period, and based on such tentative potential and the percentages of potential which the Corporation Commission allows to be produced from time to time during such potential period, the tentative allowable production of each well during such potential period shall be determined in the manner hereinafter

provided, and, except as hereinafter otherwise provided, each well in the pool shall, during such potential period, be permitted to produce its tentative allowable production for such period so determined.

"(3) As to each well in the pool, except as hereinafter otherwise provided, the corrected potential for each potential period shall be the average of the tentative potentials so determined for that and the next succeeding potential period, to be determined as soon as the tentative potential for such succeeding period has been determined, and based on such corrected potential and the percentages of potential which the Corporation Commission allowed to be produced from time to time during the potential period to which same is applied, the corrected allowable production for such potential period shall be determined, and the amount by which the actual production of any well during any potential period exceeded or was less than the corrected allowable for such potential period shall be carried over into the next potential period as a charge or credit against or in favor of said well, as the case may be.

"(4) In the event during any potential period any well, subsequent to the determination of its tentative potential for such period, is shot, cleaned out, deepened, tubed, put on air-gas lift, or plugged back in such manner as, in the opinion of the operator or of the umpire, to materially affect its potential as determined in the next succeeding potential period, then the corrected potential of such well for said current potential period shall be agreed on by the [fol. 156] operator of such well, the umpire and the majority of the Operator's Committee, and in the event they are unable to so agree, the umpire shall immediately refer the matter to the Corporation Commission for determination, and pending final determination by the Corporation Commission, the corrected potential of such well for such current potential period shall be that fixed by the umpire and a majority of the Operator's Committee.

"(5) The tentative allowable production and corrected allowable production of each well in the pool for any potential period shall be that determined as hereinabove provided, plus or minus, as the case may be, any credits or charges in favor of or against said well carried over from the preceding potential period.

"(1) At 7 o'clock A. M. on the first day of each potential period, each well in the pool shall, except as hereinafter otherwise provided, be completely shut in, and remain shut in until opened for the purpose of having its tentative potential determined in accordance herewith, provided, that notices as hereinafter prescribed, with respect to time of taking such potentials on the first day of any potential period, may be filed with the umpire on or before 12 o'clock noon of the preceding day.

"(2) Before any well in the pool is opened for the purpose of having its potential determined, the owner or operator thereof shall file with the umpire at his office in Oklahoma City, on or before 12 o'clock noon of the day preceding the day on which such well is to be opened for such purpose, a written notice giving the name and address of the operator in charge of said well, the name of the operator's representative who will witness the test of said well, the name and location of the lease on which the well to be tested is located, the serial number of said well on the lease, and the hour, not earlier than 8 o'clock A. M. nor later than 1 o'clock P. M., at which the well will be opened for such purpose. Such notices shall remain on file in the office [fol. 157] of the umpire, and be subject to inspection by any producer in the pool, and it shall be the duty of the umpire to maintain available for such inspection in his office from 1 o'clock to 5 o'clock each afternoon a list of all wells which are to be tested during the succeeding day.

"(3) When, in pursuance hereof, a well is permitted to be opened for the purpose of determining its potential, it shall be permitted to produce for four hours to be taken continuously, whether or not the well produces continuously during such time, and to be computed from the hour and minute oil first flows into lease tankage from the oil and gas separator. The amount of oil produced from said well during said four-hour period multiplied by six shall constitute the tentative daily potential of said well for the current potential period.

"(4) For the purpose of determining the amount of oil produced during said four-hour test period the oil produced during the period is to be gauged in lease tankage

which has been strapped in accordance with the usual and customary practice prevailing in the Oklahoma City field, and the amount of oil produced shall be calculated on the basis of ninety-seven per cent tank tables. The usual and customary tests and deductions shall be made for water and B. S. content, and the oil shall be gauged only after it has stood in lease tankage for a period of at least one hour.

"(5) The potential of each well in the pool is to be determined as soon as practical after seven o'clock A. M. on the first day of each potential period, provided, wells which on the 3rd day of January, 1931, are over-produced under time proration are to remain shut in until they are even, and wells which on the first day of any potential period have not served their shut in time and time charged against them account initial test, as provided by orders of the Corporation Commission, shall remain shut in until they have served such shut in time and time charged against them.

[fol. 158] "(6) The Umpire shall appoint a representative of an operator who is in no way interested in the well to be tested to be present and witness the test being made of each well, and it shall be the duty of the representative so appointed by the umpire to remain at the well which is being tested during the entire time the same is being produced for the purpose of determining its potential, and to witness all operations, tests for B. S. and/or water content, measurements and/or calculations made for the purpose of determining the actual production of oil made by the well being tested during the test period as above defined. Immediately upon the completion of such test, the representative appointed by the umpire and the representative of the operator shall file with the Corporation Commission, and a copy thereof with the umpire, a written statement duly verified by both representatives on form to be approved by the Corporation Commission, showing the amount of oil produced by said well during the test period as above defined.

"(7) In the event the umpire's representative, and well owner's representative at the testing of the well, are agreed as to the daily potential of the well as determined by the test, the operator may continue forthwith to produce said

well until there has been produced therefrom, including the amount produced during the test, the total allowable, to be calculated as hereinafter provided, for the current month. In the event the representatives of the umpire and the well owner are not agreed as to the daily potential of any well, the well shall be shut in at the close of the test, and the matter referred to the umpire. If the umpire and the operators agree as to the daily potential of the well, the operators shall, thereupon, be permitted to produce the well until it has produced, including the amount produced during the test, its tentative allowable for the current month based upon the potential so agreed upon. If the well owner and umpire are unable to agree as to the daily potential of any well, the matter shall be referred to the Corporation Commission for determination, and, pend-
[fol. 159] ing final determination by the Commission, the operator shall be permitted to produce the well until, on the basis above outlined, it has produced a tentative allowable for the current month calculated on the basis of the daily potential as fixed by the umpire.

3

"(1) The tentative allowable production of any well for the remainder of the month of January, 1931, from seven o'clock A. M. on January 3rd, to seven o'clock A. M. on February 1, 1931, and for each month thereafter, shall be determined, (a) for the remainder of the month of January, by multiplying its tentative potential for said month by the percent of allowable production as fixed by the Corporation Commission for that month, and the product by 29, and (b) for each month thereafter, by multiplying its tentative potential for said month by the percent of allowable production for that month as fixed by the Corporation Commission, and the product by the number of days in the month, and by adding to or subtracting from the product so obtained all credits or charges, as the case may be, carried over from the preceding month and/or potential period, provided, the tentative allowable production of wells, which on the 3rd day of January, 1931, or on the first day of any subsequent potential period are shut in account being over-produced under time proration or account not having served their shut in time and time charged against them account initial test, as prescribed by orders

of the Corporation Commission, for the remainder of the month in which they, respectively, become even or complete their shut in time and time charged against them account initial test, shall be determined by multiplying their tentative potential last determined by the percent of allowable production for that month as fixed by the Corporation Commission, and the product by the number of days in such month subsequent to the day and hour on which such wells, respectively, became even or completed their shut in time and time charged against them account initial test.

[fol. 160] "(2) The umpire shall advise each operator each month by written notice the tentative allowable production for such month of each well being operated by such operator, such notice to be given for the month of January, 1931, on, or as soon as practical after the third day of said month, and for each month thereafter, on, or as soon as practical after the first day of said month, and no operator shall produce from any well in the pool during any month a greater amount of oil than its tentative allowable production for that month determined as herein provided.

"(3) The under-produced time of wells which on January 3, 1931, are under-produced on time proration, shall be converted into barrels of oil on the basis of the tentative potentials of said wells respectively, for the first potential period and the amount in barrels of oil of the under-production of each said well so arrived at shall be credited to it as underage as of 7 o'clock A. M. on the third day of January, 1931.

4

"(1) Each operator shall each day furnish to the Corporation Commission on forms to be prescribed by the Commission, written statements sworn to by an authorized representative of the operator, showing for the preceding day the name and address of the operator, the name and location of the lease on which are located either oil or gas wells, and, as to each well on each lease, the tentative allowable production for the current month, determined as herein provided, the overage or shortage from the preceding month, the net tentative allowable production for the current month, the production on the day for which the report is made, the balance remaining of tentative allowable

production for the current month, and as to each lease, the amount of oil shipped by pipe line and by tank car with the name of the pipe line and/or railway company transporting same, as the case may be, and the name and address of the purchaser of oil so shipped.

[fol. 161] "(2) Each operator shall also file with the Corporation Commission each day, on forms to be prescribed by the Commission, sworn statement showing for the preceding day the total amount of gas produced from each well which has been classified by the Corporation Commission as a gas well, the disposition made of the gas produced therefrom, the amount of hydro-carbon liquid produced therefrom, and the disposition made of such liquid.

"(3) Where gas wells which produced hydro-carbon liquid are located on the same lease on which are located oil wells, the gas wells producing such liquid shall not be permitted to produce into the same tanks or into tanks in any way connected with the same tanks into which oil wells are producing. In the event the liquid production from gas wells located on a lease on which are also located one or more oil wells, is disposed of as pipe line oil, the amount of oil produced by gas wells on any such lease during any month shall be deducted from the allowable production for said month of the oil wells located on the same lease, such deduction to tbe made from the allowable production of each such oil well in proportion to its potential determined as hereinabove provided.

5

"(1) Before testing any wells for potential during the month of January, 1931, and within five days after the end of each month thereafter, each operator shall file with the Corporation Commission on forms approved by the Commission, a sworn statement with respect to each lease, showing the name and address of the operator thereof, the name and location of the lease, a list of the lease tanks on the lease showing pipe line numbers of each tank, a list of all tanks used as lease tanks off the lease, showing the location, pipe line company numbers thereof, and the amount of oil in each tank as of 7 o'clock A. M. on the 3rd day of January, 1931, and as of 7 o'clock A. M. on the first day of each month thereafter.

[fol. 162] "(2) The umpire shall forward to each producer each month a statement showing as to each oil well in the field its potential, its tentative allowable for the preceding month, any overage or underage as of the first day of the preceding month, its net tentative allowable for the preceding month, its actual production during the preceding month, and its overage or underage, if any, as of 7 o'clock A. M. of the first day of the current month, and showing as to each lease the stock of oil on hand as of 7 o'clock A. M. the first day of the preceding month, the total production during the preceding month, the total shipments during the preceding month by pipe lines and tank cars, showing the amount shipped by each, and stocks on hand as of 7 o'clock A. M. the first day of the current month.

"(3) Copies of all reports herein provided to be furnished to the Corporation Commission shall at the same time be furnished the umpire at his office in Oklahoma City.

"(4) Any person, firm or corporation transporting crude oil from the Oklahoma City field shall file with the Corporation Commission each month, on or before the tenth day of the month, a statement in duplicate showing the number of barrels of crude oil run from each lease in the field during the preceding month, and each railroad company which transports crude oil by tank car from Oklahoma City shall each month file with the Corporation Commission a statement in duplicate showing as to each shipment of oil from Oklahoma City, the name of the shipper, the name of the consignee, the destination of the shipment, the number of cars shipped showing the serial number of each car and the weight of the shipment.

6

"It is hereby made the specific and mandatory duty of the umpire to report any violations of this order to the Corporation Commission."

(o) Thereafter on the 10th day of February, 1931, the Corporation Commission entered its order No. 5437 (plain- [fol. 163] tiff's Exhibit No. 33, Rec., p. 281) and among other things therein found:

"The issues herein are relatively simple because the parties agree that for the purpose of this hearing and investigation, proration and equitable taking are recognized as valid and that the laws with reference thereto are not herein under attack, having been passed upon by the Supreme Court of this state in the case of Julian Oil & Royalties Co. v. Capshaw, et al., 292 Pac. 841; and in the District Court of the United States for the Western District of Oklahoma in Champlin Refining Company v. Corporation Commission, et al., No. 1156, and related cases. The courts have held that proration and equitable taking are valid, under the Oklahoma law.

"The only question at issue herein, aside from that of waste which is always present in any hearing of this character, is, shall the allowable and ratable takings from the Oklahoma City field be increased and, if so, how much. The answer to that question is dependent upon the market demand, a thing wholly elusive and most difficult, if not impossible, of determination."

* * * * * * *

"The testimony seems to have been very largely determined by the particular interest of the parties themselves. Nor have some of these parties been altogether consistent in their attitude toward proration; thus those desiring immediate opportunity to market an increased amount of crude petroleum generally favor an increase in alowable takings under proration, whereas those more anxious to preserve the market stability and to protect interest elsewhere, generally favor the maintenance of the present percentage of allowable takings from the Oklahoma City field, and the least possible market competition. Some of the producers whose interest are chiefly in the Oklahoma City field, however, stand squarely on the present policy of proration and suggest the limiting of takings to the actual visible market capacity, and that, of course, [fol. 164] on a ratable basis, contending that having relied on the policy of proration and the practice of proration in the Oklahoma City field, they have made no effort to provide an immediate*ly* or approximate provision for the taking care of increased runs.

* * * * * * *

"The Oklahoma City field has been prorated until its production has been reduced to the minimum, now approximately 30,000 barrels. Some of the chief producers in this field have made little or no attempt to market their crude petroleum, hoping for a day when the production generally would have so declined or have been so taken care of as to bring about a greater or more advantageous market for the Oklahoma City field.

"Nor have they made any provision for storage, in case proration should be lifted, or so increased as to throw tremendous quantities of crude petroleum from the field on the market at once. Therefore, the state, having developed this condition and having brought about this situation, is in duty bound to use its best efforts to protect the people thus affected and thus relying upon its protection. The Corporation Commission having thus far followed the policy, and the state and its people having relied thereon, could not, it appears, in good conscience, deliberately and precipitately abandon its former policy and right about face without giving persons thus relying upon this kind of protection some opportunity to look out for the future."

. . . . . .

"The applicants contend that any permissible amount of crude petroleum may be taken from the Oklahoma City wells and the Oklahoma City field without waste, either physical or economic. This the opponents of the application deny.

"Let us consider first, the question of physical waste. There is on this question, some argument and some disagreement between applicants and protestants. Wirt [fol. 165] Franklin testified that physical waste is now taking place in the Oklahoma City field through improperly cased wells which permit water to seep into the strata, or sands, thereby drowning out or driving back the oil, and through escaping or transmission of natural gas from its natural stratum into the stratum or sand containing the crude pertroleum and vice versa. This unnatural or improper transmission of natural gas from a gas stratum to an oil stratum and of oil from an oil stratum to a gas stratum could be and probably is productive of tremendous

underground waste, the oil being absorbed in the dry gas sand and the gas going into a sand where it is not presently needed for the production of oil and retarding rather than aiding the oil recovery. Similar testimony of similar instances of waste was offered on behalf of other parties to the proceedings and by some of the witnesses for the protestants.

"All parties agree that this underground waste should be stopped through proper care of the wells; in some instances, perhaps, by plugging back and cementing and in others, by introducing additional string or strings of casing and cementing. But whatever the process or the cost, the necessities of the field demand the cessation of underground wastage and the protection of the wells against its recurrence."

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"Economic waste, so far as this hearing is concerned, is too closely allied to physical waste to permit intelligent severance therefrom."

. . . . . .

"To that feature of economic waste wrapped up wholly in the question of price fixing, we shall not advert for the reason that both the state and the federal courts and the parties presenting the proceedings involving proration, have assumed, apparently, that the provision of the laws relating to price fixing are invalid, and that the Corporation Commission is without authority to sit as a price [fol. 166] fixing agency in the determination of the issues. The price of crude petroleum, however, is inseparably related to the question of economic waste. It is the demand for crude petroleum at a price which will permit the operation of wells which keeps men employed and wells operating. Without both a market demand and a price which will pay expenses, wells cannot be kept going or petroleum pumping through the pipe lines, to the trade. Therefore, much of the testimony touching upon economic waste, had to do with the price which might be maintained in the Oklahoma City field and which might reflect itself to the other wells in the state, and in determining whether or not they would be kept in operation.

"Another element of physical waste, not present, but contemplated or threatened, is that of earthen storage. Witnesses indicated that if an allowable taking is permitted far in excess of either the demand of the market or the ability of the market to absorb, operators who do not have access to pipe lines as advantageously as their neighbors and who are not provided with steel storage, will attempt to place oil in earthen storage. With this argument, we are not greatly impressed. It harks back to the days of the Cushing and Healdton fields, when the state had neither a conservation law nor a conservation policy. Earthen storage is now forbidden in any field in Oklahoma both by statute and by specific orders of this Commission. Earthern storage cannot be had except it be accompanied by physical waste as well as untold hazards in a field thus proximate to a great city. Our orders specifically prohibit the allowing of oil 'to leak or escape from natural reservoirs, wells, tanks, containers, or pipes.' (See rule 12 of this Commission's order No. 1299.) We think, however, in this connection, inasmuch as the question has been raised that we should give specific notice that earthen storage cannot either be used or tolerated in the Oklahoma City field.

"Another and an exceedingly important problem, directly connected with the question of physical waste but [fol. 167] also bearing upon the question of economic waste and the ultimate recovery of the field, is the question of natural gas wastage in connection with the production of crude petroleum. A witness, a competent petroleum engineer, testified that if the wells in the Oklahoma City field were opened to 10 per cent capacity daily flow, assumably based upon the Commission's estimated potential in its Order No. 5413, of near 6,000,000 barrels, there would be a production in the Oklahoma City field of approximately one and one-half billion cubic feet of natural gas, the greater portion of which would be blown into the air and dissipated.

"Involved in this wastage of natural gas to an extent which to the layman's mind seems criminal and which to any mind ought to be conceded to be improvident, is the question of the destruction of gas energy. The potent and necessary element, or power, is the recovery of crude petroleum. Oklahoma City wells are exceedingly deep,

generally producing crude petroleum from a depth below 6500 feet, and the gas energy so necessary for their production, once dissipated, cannot be restored. The relationship of wastage of natural gas from these wells and the allowable takings of crude petoleum from the wells is an important and a necessary one. We should not permit unlimited flow from these wells until we can be convinced that the natural gas energy is being conserved to the best advantage.

"Mr. J. R. McWilliams, a competent petroleum engineer, employed by the Skelly Oil Company, called as a witness by counsel for the applicants, Jones Bros., et al., testified that the gas ratio in the production of oil, through pinching in of the wells and through mechanical devices, could be kept down as low as 800 to 1500 cubic feet of natural gas per barrel of oil and generally not to exceed 2000 cubic feet per barrel of oil produced. Another petroleum engineer testified that 3000 cubic feet of natural gas was the maximum required for producing a barrel of crude oil. There is no evidence that any reasonable amount of study, [fol. 168] care or caution has been given by operators generally in the Oklahoma City field to the conservation of this natural gas energy or the prevention of waste of natural gas in connection with the production of crude petroleum. We should have jurisdiction to prevent such waste and to require the preservation of such energy. If there is any weakness in the law in this respect it should be amended. We ought not to be compelled to assume any such weakness for the purpose of this administrative legislation. These facts and these circumstances indicate a cause for failure to permit unlimited taking of crude petroleum from the wells in the Oklahoma City field, aside from the admitted validity of the present laws and regulations, and the assumed wastage if unlimited production of crude petroleum were permitted."

. . . . . .

"Out of this dilemma, the only practicable or feasible solution seems to be, admitting proration and equitable taking, an allowance of takings sufficient to absorb the market offered. The situation calling for relief is not based altogether on logic but is one requiring, under the

law, the protection of all the producers of the common source of supply, and presumably, the public.

"Certain it is that the great and ultimate object of the conservation laws was the protection of the public, and by the public we mean the State of Oklahoma and its people. It was the little and so-called independent producers who came to the legislature and to the Corporation Commission in 1914 and 1915, for protection. It was said that the big and the powerful interests were crushing out the small and the independent producer through taking oil from their own wells, thereby draining his properties while refusing to buy any of his production.

"Now it seems to be chiefly the distressed producers who are seeking the widening of proration, for the reason that they have accumulated obligations which can only be met through turning some of the oil from their wells into cash. [fol. 169] This is not altogether true for the reason that the Sinclair Company, one of the largest producers in the field, is unalterably opposed to the policy thus far pursued by the Corporation Commission.

"Who would be helped and who would be injured by the turning loose of production in the Oklahoma City field, beyond any reasonable ability of the market to absorb, is problematical, but, as always, the weaker would probably suffer first and the persons who are now most earnest and insistent in the requests for increasing, or lifting of proration, could not hope to escape the effects, of the probabilities of being the first to suffer, and, likely, the ones to meet the most disaster.

"As to the market demands and the effect of increasing the allowable takings, there is a constant conflict of testimony; the applicants contend that increasing the allowable takings would increase the market. The protestants, on the other hand, are of the opinion, generally, that any increasing of the allowable takings would not increase the market demand, and, some of them insist that an unreasonable increase of the allowable takings in the Oklahoma City field would be accompanied by withdrawals, to a certain extent, at least, from the market by some of the major pipe lines now taking oil. We cannot say that this is a threat because the witnesses, testifying under oath, must be assumed to have been giving their convictions as to the probable effect and result.

"The applicants, on the other hand, contend that there is a demand for Oklahoma City oil. They introduced a number of witnesses who testified that they can sell oil if they can produce it; that they have contracts for a determinate and for an indeterminate amount of crude petroleum if it can be gotten, and at a price satisfactory to themselves. This testimony, in the very nature of things, must necessarily be of a very unsatisfactory character. Witnesses testified that they could not divulge buyer's names because of the possibility of losing sales thereby. Some of this testimony was put on by brokers who testified to indefinite [fol. 170] demands for crude petroleum saying that certain persons had inquired of the ability to buy definite quantities of crude petroleum in the Oklahoma City field but did not push these inquiries when advised of the low allowable takings and of the fact that their offers probably could not be absorbed at the price quoted. All in all, and possibly in the very nature of things it must be so, the preferred markets of the applicants and their supporters, are, in the words of the protestants, largely 'nebulous.' At any rate, they are indefinite and offer no basis on which we can predicate a definite finding.

"The testimony, however, does indicate that the applicants and some of their supporters could and would market and take an increased amount of crude petroleum, and in addition to that which would be taken by the major pipe lines if the allowable takings were materially increased. In other words, we think that the applicants, while not making a conclusive case, have made one which indicates that some relief should be granted. Again, how much, is the question.

"The Oklahoma City field, the evidence indicates, is being discriminated against. It is our duty, if possible, to give those who have oil to sell, an apportunity to dispose of it, through so regulating proration as not to shut off the markets offered.

"The evidence indicates that there has been a steady and gradual decline in the production and sale of Oklahoma crude petroleum, notwithstanding proration. The opponents of the present policies of proration ascribe this falling off in the market to the rules and regulations of this Commission, claiming that if there had been no proration the heavy and increased production of Oklahoma oils would

have caused Oklahoma to continue to lead the other states of the Union in the production of crude petroleum. This partly begs the question for the reason that proration and equitable taking for the purposes of this hearing is admitted. Nevertheless the record does show that there has [fol. 171] been a decline of Oklahoma production during the past three years of over 250,000 barrels, and a retrogression of Oklahoma from first to third place among the crude petroleum producing states of the Nation, and a falling off of the gross production tax to the state of more than three million dollars per year. How much of this is incident to the general depression which has swept the country and how much to something else, it is difficult to say. Certainly all the ills have not been due to proration and we cannot say that conditions would not have been worse had there been no proration, for having been pioneered here proration has spread to Texas and California, though it has not been in use elsewhere except by voluntary action of operators in certain places, as in the Kansas fields."

* * * * * * *

"There were indications at the hearings of favoritism and of discrimination against certain operators. Without evidence thereon these must be considered fancied rather than real. We cannot assume that the umpire is not doing his duty to the very best of his ability. Nor do we have any evidence that he is not thus attempting to do his duty. But we do recognize that an unhealthy condition, or situation, exists in the Oklahoma City field. The umpire is nominated by the producers, or operators.

"Certain operators have not felt warranted in cooperating therein. There is no law compelling them to do so. There ought to be some way, which the operators generally could suggest of direct representation, in the umpiring for these persons who are suspicious of what is now being done. If this could be brought about it would go a long way toward relieving the tension in the Oklahoma City field.

"The Corporation Commission is not equipped to police the Oklahoma City field, let alone all the fields of the state. It has certain conservation agents whose duty it is to look out for and prevent violation of physical waste. The law probably never contemplated that we should attempt, with [fol. 172] these few agents, to police takings from any pool

where there might be a potential production far in excess of any market demand. If the state intends that we should, it must make provision therefor by law. There are now, in the Oklahoma City field, something like 680 oil wells. In fairness to the operators it must be said that they generally manifest a willingness, voluntarily, to observe this Commission's findings and orders relative to proration and equitable taking. Without such attitude, enforcement of proration or equitable taking, would be a physical impossibility, under the present machinery, in a field of this size, not to mention the other fields in the state.

* * * * * * *

"We come now to a determination of the figure to be used in the allowable takings. This we cannot arrive at with any mathematical accuracy; it must be purely an estimate; it must be largely a guess; it must hang on the ability of the market to absorb but must not be contingent upon any collusion among operators to discriminate against the Oklahoma City field. The applicants are basing their application for percentage increase in takings from the Oklahoma City field on the finding of this Commission's order No. 5413, supra, as to the Oklahoma City potential, which the Commission estimated for February, 1931, at 5,838,804 barrels. The umpire in the Oklahoma City field now estimates the potential of this field at 6,254,964 barrels per day but gives the actual at not in excess of 3,000,000 per day in his testimony herein.

"The testimony in the record indicates that this potential is altogether too high and that it is based on a 4-hour test of each well, made when the other wells were closed. It is contended that any reasonable estimate of the potential of this field must be based on at least a 24-hour test, with all the wells producing at once. That, of course, is a physical impossibility because of the inability to find storage for any such test. A real test, which is altogether out of the question, would be a full production of the wells over a period [fol. 173] of say, some thirty days. Various opinions from competent engineers and experts, were given as to the actual production of the Oklahoma City field; these range as high as three and one-half million barrels approximately to as low as around one million barrels. The Commission should find, under the evidence, that the actual production

of the Oklahoma City field would be not to exceed from two million to two and one-half million barrels per day. A 5 per cent allowance on such a potential would be a maximum of 125,000 barrels.

"Wherefore, premises considered, and the Commission being advised, it is therefore ordered:

"1. That orders Nos. 5413 and 5414 made and entered on December 30, 1930, be and the same are hereby modified and supplemented insofar as they affect what is known as the Oklahoma City oil field, and that the potential production of said field be and the same is hereby determined to be approximately 2,000,000 barrels of crude oil per day.

"2. That the amount of allowable production from said Oklahoma City field be and the same is hereby increased from the allowable heretofore determined, to 125,000 barrels per day, or 6¼ per cent of the potential production of 2,000,000 barrels per day as herein determined.

"3. That each person, firm or corporation having the right to drill into and produce oil from the Oklahoma City oil field, may take from such pool, or area, or extensions thereof, 6¼ per cent of the potential production of the wells owned and operated by any such person, firm or corporation, and each person, firm or corporation having such right to drill into and produce oil from said pool be and they are hereby required to produce said percentage in such a way as not to constitute waste, and in such a way as not to constitute an unreasonable waste of natural gas or natural gas energy.

[fol. 174] "4. That the owners and operators of oil and gas property in what is known as the Oklahoma City oil field, be and they are hereby prohibited from storing crude oil in said field in earth storage tanks or other storage facilities which permit leakage of oils in a wasteful manner.

"5. That in estimating the allowable run from each well in the Oklahoma City field on the basis of 125,000 barrels for said field as herein determined, the true gauge shall be one-third of the estimated production on the basis of the four-hour gauge, multiplied by 6, and each owner and operator of any well or lease in said field shall be permitted 6¼ per cent of the potential production arrived at and determined by this method.

"6. That jurisdiction of the subject-matter and parties herein be and the same is hereby retained for the purpose of making ancillary or supplemental orders hereto, and March 2nd, 1931, be and the same is hereby set as the date for the presentation of any additional testimany of any interested party with respect to the matters and things here involved, and particularly as to any changed condition with respect to the market demand for crude oil or petroleum produced in said field.

"7. That the pipe line companies and common carriers of crude oil and petroleum from the Oklahoma City oil fields, be and they are hereby ordered and directed to cooperate to the fullest extent with the producers in said field, and shall take such inereased quantities of crude oil or petroleum from said field as may be produced, without waste, under the terms and provisions of this order.

"8. That the terms and provisions of order No. 5413, and other orders heretofore made and entered, and now in effect, except as modified herein, shall remain in full force and effect.

"9. This order to be in full force and effect from and after the date of its promulgation and until further order of the Commission."

[fol. 175] (p) That thereafter on February 26th, 1931, the Corporation Commission entered its order No. 5444, (plaintiff's Exhibit No. 33, Rec., p. 281) as follows:

"Now, on this 26th day of February, 1931, the Commission having under consideration the application of Cicero Murray and Roy M. Johnson, who have been appointed as a Committee by Governor Wm. H. Murray to investigate the methods of prorating oil in the Oklahoma fields, said Committee having on February 24th, 1931, in writing, requested this Commission for an order making a potential test of the Seminole oil fields.

"It is therefore the order of the Commission, premises considered, that the said test be made for a period of ten (10) days, beginning March 5th, and that the following pools are included in this order:

East Earlsboro, Searight, Maud, Mission, Carr City, South Earlsboro, Little River, East Little River, Allen,

Seminole, East Seminole, Bowlegs, St. Louis, Earlsboro, Earlsboro Townsite, and Sasakwa.

"It is the further order of this Commission that said gauges be taken under the rules and regulations set out in the orders of this Commission now in effect in said fields.

"Done at Oklahoma City, Oklahoma, the 26th day of February, 1931."

(q) Thereafter, on June 27th, 1931, the Corporation Commission entered its order No. 5448 (plaintiff's Exhibit No. 35, Rec., p. 282), and among other things found:

"That order No. 5486 herein issued by this Commission on the 29th day of May, 1931, permitting allowable runs of 6 per cent of the potential production of the wells as determined by the umpire also provides that:

" 'The umpire shall permit to be supplied any reasonable market demand over and above the reasonable market demand necessary to take care of the percentage of produc- [fol. 176] tion provided in the preceding paragraph hereof, but shall from time to time allot the same to the under-produced and under-run wells. If and when the under-run and under-produced condition shall be eliminated in the field, the umpire shall immediately report the fact to the Commission for its further action and allotment of such market.

" 'Jurisdiction of this cause and of the said petition is hereby retained for the purpose of making such further additional or different orders, rules and regulations as may from time to time appear to be proper, and any interested party may at any time apply to the Commission for any such order, rules and regulations.'

"The Commission further finds from the foregoing verified applications, and from the reports of the umpire that the pipe line demands based upon the average takings over the past ten days are in excess of 200,000 barrels per day;

"That the allowable production, at 6 per cent of potential, under order No. 5486, would be 1,340,588 barrels, from 7 o'clock A. M. June 27th, 1931, to July 1st, 1931, at 7 o'clock A. M., both inclusive;

"That the balance of the June allowable which cannot be produced during the month of June is 200,000 barrels, and that there will be in addition thereto tank bottoms, working stock and June 30th production, not available for running

in June, of 700,000 barrels, or 900,000 barrels, deductable from the foregoing figure of 1,340,588 barrels, or a net of 440,588 barrels, from 7 o'clock A. M., June 27th, 1931, to July 1st, 1931, 7 o'clock A. M., or an average daily production of 110,147 barrels for this period;

"That there is an average daily pipe line requirement, estimated, for the remainder of June, 1931, of 200,000 barrels, or a daily average shortage of fulfilling the market demands of 89,853 barrels;

[fol. 177] "That the Commission's estimated potential of the Oklahoma City field for the remainder of the month of June, 1931, is 2,539,059 barrels per day;

"That it will require at least 4 per cent increase on the Commission's estimated potential of the Oklahoma City field to supply the additional market demand.

"Wherefore, premises considered, and the Commission being advised, it is therefore ordered that effective 7 o'clock A. M. June 27th, 1931, and continuing until 7 o'clock A. M., July 1st, 1931, and/or until further order of this Commission, all wells in the Oklahoma City field not now illegally overproduced, shall be permitted to produce 10 per cent of their potential production as determined by the umpire, under the orders of this Commission, less any permitted overproduction.

"It is further ordered that the producers and purchasers in the Oklahoma City field shall immediately be notified and in such expeditious manner as to give all parties opportunity to take advantage of this order on this date.

"It is further ordered that except as modified herein, the Commission's order No. 5486 shall remain in full force and effect."

(r) That on the 5th day of March, 1931, the Corporation Commission entered a journal entry No. 1856 (plaintiff's Exhibit No. 33, Rec., p. 281), in words and figures as follows:

"Be it remembered, that on this the 5th day of March, 1931, the Commission having had under consideration the application of Wirt Franklin, et al., for increased allowable takings from the Oklahoma City field, and announcement made by the Commission in connection therewith from the bench at the conclusion of its hearing on March 4, 1931;

"And the Commission having before it the request of the Governor of Oklahoma in connection therewith, which is in words and figures as follows, to-wit:

[fol. 178] "'On yesterday you made an order increasing the flow of oil and placing a construction on the order heretofore made as to allowing only two-thirds of the field's allowable to be produced. Personally, I do not believe that the order was the direct cause for reduction of the price but used as an excuse. I believe that the intention was to do so by certain big companies as soon as Congress adjourned. Therefore, I would ask the Commission to reverse the order placing the Oklahoma City field back where it was prior to your order of yesterday and then that everything relative to oil, both before the Commission and before the Legislature be held in abeyance until after the meeting to be held in Texarkana, Arkansas, on Monday, March 9th.

"'It is my hope that at this conference there can be a plan worked out that will reach the situation.

"'The sacrifice that must needs be made by the Independent Producers should be matched by the importers in like sacrifice in importing oil. In other words, we should remove all excuse for reduction on the part of the state.'

"And the Commission being further advised, finds: That the request for staying action on the matter of increasing the allowable takings from the Oklahoma City field should be granted and that action contemplating increased allowable takings should be delayed and held in abeyance until after the foregoing meeting of the several states' representatives in Texarkana, Arkansas, on March 9, 1931, and until such time as the Commission may find its advisable to act thereon.

"It is, therefore, ordered that the announcement of March 4, 1931, increasing the allowable takings in the Oklahoma City field, be and the same is hereby revoked and held in abeyance until further order of this Commission.

"It is further ordered that that part of the announce-

[fol. 179] ments specifically construing runs from even wells from the Oklahoma City field for dates prior to March 1, 1931, is hereby rescinded and that the order pertaining to runs from even wells shall be construed only as permitting the full amount of runs from even wells from, on and after March 1, 1931; and that order No. 5437 as construed herein,

be and remain in full force and effect until further order of this Commission.

"Done at the office of the Corporation Commission, State Capitol, Oklahoma City, Oklahoma, the day and date first above mentioned herein."

That the foregoing consecutively numbered orders of the Corporation Commission, together with the journal entry so identified, constitutes the substantive portions of the administrative orders of the Corporation Commission, issued in the enforcement of the so-called proration law, of which the plaintiff complains;

(13) That in the matter of the consideration of the subject of "waste," by the Corporation Commission, upon the hearings held prior to the entering of the various orders of which complaint is made in this cause, evidenced by the respective narratives thereof filed in this cause in January, 1931, and at the trial offered as so filed in evidence as defendant's exhibit (otherwise unidentified, Rec. pp. 326-327); and from which testimony so taken by the Corporation Commission threatened physical waste was found by the Commission to be imminent, this plaintiff now asks this honorable court to specifically find:

(a) That the Corporation Commission did conduct hearings before entering the various orders complained of, at which testimony concerning threatened physical "waste" of oil, generally, was taken;

[fol. 180] (b) That the evidence so taken did not warrant a finding that actual physical waste above ground was occurring in violation of the Conservation Laws of the State of Oklahoma at any place within said state;

(c) That some of the testimony taken before the Commission, was to the effect that in the opinion of the witnesses so testifying, physical waste in the sense of the use of earthen storage and permitting oil to run into the creeks, would result, if unrestricted flow to capacity of all of the wells in the state, be permitted;

(d) That upon the contrary, other testimony upon the like subject was to the effect that such physical waste of oil, as was incident to earthen storage and the use of creek beds, had not existed in the State of Oklahoma, since

the early days in Cushing, some fifteen or sixteen years back; and the contrary opinion was that if all of the wells in the state were opened to their capacity, the result thereof would be 3-cent gasoline, that the small producer would take his crude as far as his facilities would permit, without waste, and that the larger companies who could not ship all of their oil, would keep their wells shut in until they could increase their facilities to handle same;

That the Corporation Commission in its order No. 5413 (plaintiff's Exhibit No. 33, Rec., p. 281), after the conclusion of said hearings found, with relation thereto:

"That there is an overproduction of crude oil in the State of Oklahoma, attended by waste of gas and of gas pressure, and that the producers of crude oil in the oil pools of Oklahoma are threatening to, and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, * * * and waste incident to the production of crude oil, or pe- [fol. 181] troleum, in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding, that orders, rules and regulations of this Commission are necessary in order to prevent such waste."

This plaintiff now requests this honorable court to specifically find that the Corporation Commission was not warranted by the evidence so offered in its hearings, in so finding.

(14) That while the Corporation Commission had evidence before it, with regard to the actual waste of gas and gas energy (order 5413, supra, and particularly p. 6, order 5437, supra) in the production of oil in the Oklahoma City field, it did not make any order or restrictive regulation concerning the same;

(15) That by gas-oil ratio, in the production of crude oil, is meant the ratio of gas utilized to the barrel of oil produced by the well;

(16) That a proper gas-oil ratio in the Wilcox (prolific) area in the Oklahoma City field, should range from 700 to 2,000 cubic feet of gas to the barrel of oil (Rec., p. 106), and that 450 to 5,000 cubic feet of gas to the barrel of oil marks the limit of a proper ratio (Rec., p. 340);

(17) That the Corporation Commission has never fixed any gas-oil ratio for the Oklahoma City field (Rec., p. 110), although every well, in the interest of conservation, should be operated at the lowest possible gas-oil ratio (Rec., p. 341);

(18) That there is a tremendous advantage in having a proper gas-oil ratio, in that the gas in an oil producing formation, particularly when dissolved in the oil, serves [fol. 182] the double purpose of acting (a) as an agency to move the oil horizontally through the oil producing formation to the well bored, and (b) as that element of efficiency in producing oil which will eliminate the necessity of artificial assistance (Rec., p. 110);

(19) That a low gas-oil ratio is one of the most important things in producing oil, regardless of whether the same is being produced under proration or upon full time (Rec., p. 111), also (Rec., p. 535);

(20) That excessive gas-oil ratio production may be corrected by landing the flow string in the proper position in the producing horizon (Rec., pp. 107-108) by running a string of smaller-sized tubing (Rec., pp. 108 and 264), and by proper engineering practice (Rec., p. 346);

(21) That the significance of the application of a proper gas-oil ratio can best be illustrated by a concrete calculation;

(a) To lift 500 barrels of oil, utilizing natural gas as the energy necessary therefor, upon a gas-oil ratio of one barrel of oil to 80,000 cubic feet, would utilize 40,000,000 cubic feet of gas, which, after having been so utilized is then dissipated into the air;

(b) To lift the identical 500 barrels of oil in a well in which the gas-oil ratio was one barrel of oil to 2,000 cubic feet would require 1,000,000 cubic feet of gas, which after having been so utilized, would be likewise dissipated into the air;

(c) The 1,000,000 cubic feet of gas so utilized in the second instance, has served a useful purpose, and has not been wasted; but in the first instance 1,000,000 cubic feet of gas [fol. 183] so utilized served a useful purpose, and the remaining 39,000,000 cubic feet was totally and irrevocably lost, and would (at 6 cents per 1,000 cubic feet, Rec., p. 371) have an intrinsic value greatly in excess of the value of the 500 barrels of oil which were produced in its utilization;

(22) That wells are being produced in the Oklahoma City field on a gas-oil ratio of as much as 700,000 cubic feet of gas to a barrel of oil (Rec., p. 106) indicating the use of 350,000,000 cubic feet of gas to produce 500 barrels of oil in such well;

(23) That the Champlin Refining Company has produced its wells with the exception of its Naden No. 1 upon a gas-oil ratio of not more than 4500 cubic feet of gas to the barrel of oil and that the Naden No. 1 well was "closed in" on July 12th, 1931, to be reconditioned, in order that it might be so produced, and will not be again produced until it can be so reconditioned;

(24) (a) That for the purpose of (1) controlling market demand; (2) pipe line nomination; (3) creating discrimination in favor of all outside producing areas in the State of Oklahoma other than the Oklahoma City field, against the said Oklahoma City field; (4) continuing one Ray Collins as umpire throughout the State of Oklahoma, whose particular business it is to see that the Greater Seminole area is properly cared for; and of continuing one Otto Bradford as assistant umpire in charge of the Oklahoma City producing area; (5) creating, and thereafter taking, a so-called potential upon the wells in the Oklahoma City field, which is a mathematical fiction, contrary to the spirit of and without any significance of a gauge (Rec., p. 48) thereon as required by law, but for the ulterior pur- [fol. 184] pose of enabling favored producers and such of said producers as own great acreage with inside locations drilled thereon, to thereby build up mathematically fictitious potentials that not only affect the allocation of market demand, but thereby enable such favored producer to have at all times an allowable production of oil greatly in excess

of any need therefor, and at the same time prevent the less favored independent operator who does not happen to have either a large acreage or a great number of wells from obtaining sufficient crude oil with which to meet his necessary demands; a so-called General Committee, also denominated by its chairman, Alvin Richards, as "The State Wide Proration Committee" (Rec., p. 286), which supervises the entire administration of proration within the State of Oklahoma (Rec., p. 125), came into existence from a source which the umpire Ray Collins was unable to identify (Rec., p. 128); that this committee is not generally known to the public, and insofar as the record here reveals, has never been approved by the Corporation Commission of the State of Oklahoma, nor is there any public record of just what this committee's duties are, or how it functions in the matter of the allocation of market demand and pipe line nominations (Rec., p. 126);

(b) That the State Wide Proration Committee, as identified by Ray Collins (Rec., p. 125), consists of Richards, of the Pure Oil Company, chairman; Sidwell, of the Prairie Oil & Gas Company; Filley, of the Texas Company; Nicholas, of the Continental Company; Blue, of the I. T. I. O.; Fell, representing the operators in southern Oklahoma; Young, of the Carter Oil Company, and Davis, of the Phillips Company; that this committee acts as a fact-finding body, and concerns itself with potentials and demand for crude oil in the State of Oklahoma, with consequent recom- [fol. 185] mendations to the operators in the pool (Rec., p. 126); that the Committee gets its information upon which it makes its recommendations, from Ray Collins, and a statistician, Mapes, (Rec., p. 126);

(c) That the umpire, Ray Collins, is paid a salary of $24,000.00 per year (Rec., p. 115), that he has never taken an oath of office (Rec., p. 133), or received a formal certificate of appointment as such umpire (Rec., p. 132), and receives his check from the Carter Oil Company, owned by the Standard Oil Company of New Jersey (Rec., pp. 129-130); and that the Oklahoma Pipe Line Company, one of the principal pipe lines serving the Greater Seminole and Oklahoma City areas, is also owned and controlled by the Standard Oil Company of New Jersey (Rec., p. 130);

(d) That the umpire, Ray Collins, was first employed as umpire by one Reeser, president of the Barnsdall Company; that the said Reeser is not a member of the committee, and was not a member of the committee at the time he employed Collins (Rec., p. 129);

(e) That the Oklahoma potential and allowable production for the period of January, 1931, based upon this so-called State Wide Proration Committee's recommendation, and thereafter promulgated under order No. 5413 of the Corporation Commission of the State of Oklahoma (plaintiff's Exhibit No. 33, Rec., p. 281), was in the following proportions:

Estimated Potential for January, 1931

		Percent of total
Oklahoma City	5,388,298	86.2%
Seminole	533,918	8.5%
Balance of state	330,003	5.3%
Total estimate	6,252,219	100.0%

[fol. 186] Allowable Production for January, 1931

		Percent of total
Okla. City allowed 1.58% of its potential or	85,000	16.8%
Seminole allowed 35.3% of its potential or	188,366	37.2%
Balance of state 70.5% of its potential or	232,729	46.0%
Total	506,095	100.0%

(Plaintiff's Exhibit No. 11, Rec., p. 36.)

(f) That there are six of the major pipe line companies (not including Champlin) that serve the Greater Seminole area with 290,000 barrels daily capacity (63.57% of the total pipe line facilities of that field), and also serve the Oklahoma City field with 203,500 barrels daily capacity (68.75% of the total pipe line capacity facilities of that field) (plaintiff's Exhibits No. 16 and No. 17, Rec., pp. 167 and 168); that of these major pipe line companies, or their ownership, three (Empire, Carter and Prairie) are represented on the General Advisory Committee that allocates market demand and makes pipe line nominations (Rec., p. 126);

(g) That five of the seven companies, in addition to the southern Oklahoma representative, that are represented on that Committee, have produced 41,712,413 barrels (plaintiff's Exhibit #19), constituting 28.35% of all the oil produced in the Greater Seminole area, since October 16, 1929; and for comparison, the same five companies have produced only 1.1% of the oil produced in the Oklahoma City field, during the first six months of 1931;

(h) That another company, however, the Indian Territory Illuminating Oil Company, represented on this all-powerful committee, produced in the Oklahoma City field [fol. 187] 5,681,949 barrels (plaintiff's Exhibit No. 20) being 23.52% of all the oil produced in that field during the first six months of 1931;

(i) That as a result of the allocation of 161,146 barrels to the Oklahoma City field for June, 1931 (plaintiff's Exhibit No. 18, Rec., p. 169), and the allocation of 179,066 barrels to the Greater Seminole area for the like period (plaintiff's Exhibit No. 14, Rec., p. 124), the six pipeline companies serving both fields, were permitted to produce 56,396 barrels within the Greater Seminole area, from leases which these companies owned or controlled in that area, constituting 31.5% of all of the production for such area; while three of the same pipeline companies (or corporations in affiliated control), towit: Indian Territory Illuminating Oil Company, Prairie, and Shell, produced 37,608 barrels from leases which these three or affiliated companies owned, or controlled in the Oklahoma City field, constituting 23.3% of the total production for the Oklahoma City field; and of particular significance is the production of the Indian Territory Illuminating Oil Company for this period of time, in the total of 35,892 barrels, constituting 89.73% of its total pipeline capacity, and 23.3% of the total production for the Oklahoma City field (plaintiff's Exhibits Nos. 17 and 18, Rec., pp. 168 and 169);

(j) That Exhibits No. 15 (Rec., p. 137), No. 19 (Rec., p. 173) and No. 20 (Rec., p. 173) disclose that the following named companies, represented on the General Advisory Committee, hereinbefore identified (Rec., p. 125), produced in the respective areas the total number of barrels of oil set opposite the name of each:

[fol. 188]

	Greater Seminole area				Oklahoma City area			
	Pipe line capacity, Exhibit 16	Per cent of total P. L. capacity	June allowable production, Exhibit 14	Ratio allowable production to P. L. capacity	Pipe line capacity, Exhibit 17	Per cent of total P. L. capacity	June allowable production, Exhibit 18	Ratio allowable production to P. L. capacity
Companies with pipe lines in both fields:							540	
*Empire (affiliated with I. T. I. O.)	10,000	2.19	5,403	54.03	40,000	13.52	35,352	89.73
*Oklahoma Pipe Line Co. (Carter)	55,000	12.06	17,359	31.56	20,000	6.76	none	
*Prairie	110,000	24.11	16,628	15.11	45,000	15.20	1,031	2.29
Magnolia	25,000	5.48	12,133	48.53	26,000	8.78	none	
Stanolind	72,000	15.78	410	.57	60,000	20.27	none	
Shell	18,000	3.95	4,563	25.35	12,500	4.22	229	1.83
Total—Companies with pipe lines serving both fields	290,000	63.57	56,396	19.45	203,500	68.75	37,608	18.48
Companies with lines serving one field only:								
Barnsdall	10,000	2.19	4,081					
Consolidated	4,500	.98						
Cosden	12,000	2.63	5,974					
Deeprock	10,000	2.19	4,317					
Globe	4,000	.88						
Gulf	45,000	9.86	19,242					
P. & R.	3,700	.81						
Pure	10,000	2.19	6,961					
Texas Empire	35,006	7.68						
White Oak	8,000	1.76						
*Continental	.....	.....	.....	.....	25,000	8.45	685	
Sinclair Texas	.....	.....	.....	.....	60,000	20.27	7,970	
*Texas	24,000	5.26	5,480					
Tidal	.....	.....	2,358	.....	7,500	2.53		
Total—Companies in one field	166,200	36.43	48,413	.....	92,500	31.25	8,655	
Balance of production by Producers without pipe line facilities	.....	.....	74,157	.....	.....	.....	115,339	
Totals	456,200	100.00	179,066	39.25	296,000	100.00	161,146	54.44

* Indicates companies that are represented on the General Advisory Committee that allocates market demand (Rec., pp. 125-127).

[fol. 189]

	Greater Seminole area		Oklahoma City field	
	Oct. 18, 1929, to June 1, 1931, Plaintiff's Ex. 19		First 6 months 1931, Plaintiff's Ex. 20	
	Barrels	Per cent	Barrels	Per cent
Carter Oil Company	14,390,944	9.78	none	
Dick Young (Rec., p. 126).				
Continental Oil Company	2,273,306	1.55	127,057	.53
Mr. Nichols (Rec., p. 125).				
Howard-Fell-Independent of	none		none	
Southern Okla. Producers (Rec., p. 126).				
Indian Terr. Illum. Oil Co	5,221,511	3.55	5,681,949	23.52
Burdett Blue (Rec., p. 125).				
Subsidiary of Empire G. & O	3,181,350	2.16	none	
Phillips Petroleum Corp	5,614,358	3.82	3,465,880	14.34
W. N. Davis (Rec., p. 127).				
Prairie Oil & Gas Co	13,633,360	9.27	164,758	.68
J. S. Sidwell (Rec., p. 125).				
Pure Oil Company	7,296,853	4.95	none	
Alvin Richards (Rec., pp. 126-7).				
Texas Company	4,117,950	2.80	none	
Mr. Filley (Rec., p. 125).				
Total for companies represented on genl. advisory com	55,729,632	37.88	9,439,644	39.07
Total by contributors not represented on genl. com	90,299,802	61.38	11,991,596	49.63
Produced by non-contributors	1,093,015	.74	2,730,259	11.30
Grand total for period	147,122,449	100.00	24,161,499	100.00

(k) That without regard to local refinery needs, and with the Champlin pipeline in both areas eliminated, a comparison of pipe line facilities against allowable production for the Greater Seminole and Oklahoma City areas, taken from plaintiff's Exhibit No. 14 (Rec., p. 124), Exhibit No. 16 (Rec., p. 167), Exhibit No. 17 (Rec., p. 168), and Exhibit No. 18 (Rec., p. 169), reveals the following (see sheet herewith inserted):

(25) That the posted price of 38 gravity Oklahoma crude in the Oklahoma City field as of October 25, 1930, was $1.01 (Rec., p. 230); that the cost of manufacturing into its by-products such barrel of oil when so purchased, was approximately 35c (Rec., p. 232), and the transportation cost [fol. 190] thereof was .05 cents per barrel (Rec., p. 232), making the total cost at the Champlin refinery of Oklahoma City oil, if so purchased during the period, of approximately $1.41 per barrel (Rec., p. 232); that the market value of the refined products from such barrel of oil when so manufactured during such period of said posted price was $1.64 (Rec., p. 231);

That on December 29, 1930, the posted price of 38 gravity Oklahoma crude in the Oklahoma City field was 67c (Rec., p. 233), that the cost of manufacturing and transporting remained the same; and that the market value of the refined products from such barrel of oil when so manufactured during such period of said posted price was $1.48 (Rec., p. 233);

That on March 5, 1931, the posted price of 38 gravity Oklahoma crude in the Oklahoma City field was 63c per barrel, that the cost of manufacturing and transporting remained the same; and that the market value of the refined products from such barrel of oil when so manufactured during such period of said posted price was $1.37½ (Rec., p. 234);

That on June 1, 1931, the posted price of 38 gravity Oklahoma crude in the Oklahoma City field was reduced to 35c per barrel, that the cost of manufacturing and transporting remained the same; and that the market value of the refined products from such barrel of oil when so manufactured during such period of said posted price was $1.01 (Rec., p. 234);

That the manufacturing cost of 35c per barrel used in the foregoing calculations does not make any allowance for depreciation; that the lifting cost of one barrel of oil in the Oklahoma City field during all the period of time was .053c (Rec., p. 236), and that the approximate transportation cost during all the period of time was 5c per barrel (Rec., p. 232);

[fol. 191] (26) That the cost of the maintenance of the umpire's office, his assistants and matters incident thereto in all of the producing areas of the State of Oklahoma, outside of the Oklahoma City field, is borne by the Greater Seminole operators only (Rec., p. 138); and the like cost in the Oklahoma City field is borne by some twenty of more than fifty operators in that area (Rec., p. 203); that for the period from November 1, 1929, to January 1, 1931, the operators in the Greater Seminole area contributed to such expense account the sum of $95,181.39 (Exhibit No. 15, Rec., p. 137); and that for the period from January until June, 1931, there was no material change in the list of such contributors and that the said contributions were calculated against said contributors upon the basis of number of barrels produced by each in the manner shown by Exhibit 15 (Rec., p. 137); that out of the funds so obtained substantial portions thereof were allocated to the payment of counsel fees for special counsel appearing upon behalf of the Attorney General's office and the Corporation Commission in opposition to this plaintiff in this cause (Exhibit No. 21, Rec., p. 201).

That the Champlin Refining Company producing oil in the Greater Seminole area and in the Oklahoma City area has not contributed in any sum whatsoever, to the Greater Seminole fund (plaintiff's Exhibit No. 15, Rec., p. 137), nor to the Oklahoma City fund (plaintiff's Exhibit No. 22, Rec., p. 203);

That while the contributions are made in the Greater Seminole area upon the basis of barrels of oil produced, contributions in the Oklahoma City field are based upon the payment of membership fee in the organization, upon which one vote is allowed for each $100.00 or fractional [fol. 192] portion thereof paid by such member, with the proviso that in no event shall any member cast more than 25% of the total vote (Rec., pp. 208-209); that the record

does not disclose upon what basis of production a membership vote may be available for the said contribution of one hundred dollars, or fractional part thereof, that so entitles the holder to such vote;

(27) That on June 1st, 1930, approximately 140 wells (plaintiff's Exhibit No. 24, Rec., p. 217), in the Oklahoma City field were being calculated in the total potential of the field for market demand and percentage purposes wholly upon an estimated potential (Rec., p. 219) which was entirely arbitrary (Rec., p. 219), and did not rise to the dignity of a gauge as defined by the orders, in that, some of said wells were estimated on an "eight-hour run and some not" (Rec., p. 220); that including such estimated potentials the total potential of the Oklahoma City field for June, 1931, was found by the Corporation Commission to be 8,963,977 barrels (Exhibit No. 24, Rec., p. 217) and thereafter used for all purposes in which such potential was a factor;

(28) That the plaintiff company has not sold any crude oil to any purchaser during 1930, and 1931 (Rec., p. 280), and that from time to time it has posted a price in the Oklahoma fields (Rec., p. 281);

(29) That under the plan of intermittent flowing of oil and gas wells as practiced under the proration orders in the Oklahoma City field, all of the wells which are permitted to be flowed upon a given day are practically all in operation during the day time with a very limited production at night (Rec., pp. 382-383); that as a result thereof there is a waste of gas upon account of the lack of uni- [fol. 193] formity of operation with its attendant inability on the part of the gasoline plants to utilize the gas so produced (Rec., p. 383); that it is not practicable to put in a sufficient number of plants to take care of such intermittent flush production (Rec., p. 383); that the requirement of the production thereon upon a proper gas-oil ratio would enable the industry to take care of such gas for the manufacture of natural gasoline (Rec., p. 384); that approximately 437,000,000 cubic feet of gas (Rec., p. 369) is being taken daily in the Oklahoma City field by the gasoline plants from which 218,000 gallons of natural gasoline (Rec., p. 370) is being manufactured, of a value of 1½c per gal-

lon (Rec., p. 370); that a residue gas of the value of 6c per thousand (Rec., p. 371) results, for which the land owner receives before the gasoline is extracted a fraction of 1c per 1000 cubic feet (Rec., p. 376), of which approximately 100,000,000 cubic feet, only, is estimated to be marketed daily for domestic consumption (Rec., p. 371);

(30) That for the purpose of determining the potential of the Greater Seminole area the daily average of the actual production in that field for a given month was taken by the owners of such properties, to arrive at the potential for each lease and that from the 1st of November, 1929, until April, 1930, each lease was declined 3% per month, and this method of the use of the decline curve was the result of a consultation among the various engineers of the producing companies who had made a study of such decline curves (Rec., p. 141); that the 3% decline so averaged was in conformity with the past history of the field (Rec., p. 142); that thereafter the operators in the Seminole area took a fifteen-day gauge to check up on such decline curves which showed a slight increase over the volume at which [fol. 194] the same had been carried, and that thereafter the potential for the Greater Seminole area was carried upon the basis of the fifteen-day gauge until March, 1931 (Rec., p. 142);

(31) That prior to January 1st, 1931, production in the Oklahoma City field was prorated upon a "time basis," which means the wells were allowed to produce intermittently for given periods of time; that after that date prorated production in the said Oklahoma City area was changed to a percentage production based upon potentials calculated as herein set forth; that no gauge of any producing well in the Oklahoma City field since January 1st, 1931, has ever been taken other than by opening such well in the presence of such witnesses as were designated by the operators for a period of four hours continuous flow and thereafter multiplying such four-hour flow by the figure six to obtain an estimated twenty-four hour flow; that subsequent to the 10th day of February, 1931, it was ruled by the Corporation Commission that such potential was further subject to the qualification of a division by three upon the theory that the result of multiplying by six gave a potential entirely too high and that if divided by three would

give more nearly an accurate potential of such well; that in the calculation of the potential of said producing area for June 1st, 1931, upon some 144 wells of a total of 762 producing wells in that producing area the potential thereof was entirely arbitrarily estimated in the umpire's office, and that the total potential of said 144 wells so estimated was 1,780,473 barrels or 19.8 per cent of the total calculated potential of said producing area of 8,963,977 barrels, and upon that total potential thus calculated the operators were allowed to produce two (2%) per cent of such estimated capacity;

[fol. 195] (32) That no gauges of any character have ever been taken in the State of Oklahoma by anyone other than by the persons authorized by the orders and rules of the Corporation Commission;

(33) That the taking of a gauge as that term is defined and used in the industry, when employed in contracts with reference to purchase of property or any engagement that has to do with oil producing lands, means a continuous flow of the well being so gauged for thirty days' time, and that the measured volume of production upon the last day determines the gauge of the well (Rec., p. 48);

(34) That the Arbuckle lime area containing the greater portion of the producing area of the Oklahoma City field is now seriously affected by the encroachment of water and that by far the greater volume of oil to be ultimately recovered in that producing zone has been already obtained, so that a large percentage of the wells in that producing zone cannot now upon full-time capacity make a volume of oil equal to the allowable percentage of production in said producing area;

(35) That the umpire, Ray Collins, stated while testifying before the Corporation Commission in substance that in the administration of the law he was not interested in the public or the refineries, but was only concerned with the operators' interests (Rec., pp. 146 and 147);

(36) That notice of the taking of a so-called gauge in one field (notwithstanding the relation of market demand allocated thereto) is not given to any producer in any other field (Rec., p. 151);

(37) That assignment of market demand for the state (Rec., p. 154) is made by the Corporation Commission upon the recommendation of the umpire, Ray Collins, and one [fol. 196] Mapes (Rec., p. 152), who get their information from the different purchasing companies (Rec., p. 152), through the heads of the pipe line departments (Rec., p. 152), mostly members of the so-called State Wide Proration Committee;

(38) That the umpire considered "the potential of the Oklahoma City field (to be only) a measuring stick to allow each producer a ratable taking out of the field" (Rec., p. 155);

(39) That the effect of proration in the Oklahoma City field in a physical sense, has been to dam up the production thereof and thereby prevent settled production therein, with its attendant absorption of market demand, construction of storage and pipe line facilities, and the utilization of gas energy in a proper ratio, without wasteful dissipation of the residue thereof so necessary in modern life for domestic consumption;

(40) That the Oklahoma City producing area and the Greater Seminole producing area are separated approximately sixty-five miles (Rec., p. 32) and that the area between the two fields is a sinclinal depression, containing only water (Rec., p. 32); thereby precluding the draining of one producing area into or from that of the other, or into or from any other field in the State of Oklahoma; that a well drilled in the Oklahoma City field cannot in anywise affect any well in the Seminole area, or in any other area, and likewise a well drilled in the Seminole producing area cannot in anywise affect a well drilled in the Oklahoma City field, or in any other area (Rec., p. 34);

(41) That the structure underlying the Oklahoma City field may be defined as a buried anticlinal ridge of truncated or ordovician rocks overlain in all probability by Pennsylvania shales, in which truncation has cut across [fol. 197] the top of the Arbuckle limestone to the east side of the field. The truncation is westward with a dipping slope and ranges the beds in their series in which they all arise, toward the east; the first series or beds producing the field being the Arbuckle limestone, the next being the Johnston

or Kinter sand, the next being the School Land sand, and the next being the prolific Wilcox sand (Rec., pp. 18-21, inc.). (See, also, plaintiff's Exhibit 12, Rec., p. 77.)

(42) That oil and gas may be taken from more than one of said producing areas in the Oklahoma City field notwithstanding the casing in such well has only been carried to the first producing zone encountered, thereby in effect converting more than one of said producing areas, insofar as gas energy is concerned, into a common pool;

(43) That a well may be so drilled in the Seminole area that it will produce from all of the sands in that area whereas in the Oklahoma City area such cannot be done (Rec., p. 31);

(44) That physical waste is the actual waste of oil and gas as substances, as where brought to the surface and allowed to evaporate or leak away, generally restricted in definition to waste that occurs after oil and gas have been reduced to possession;

(45) That underground waste is a term intended to cover theories regarding what takes place underground during the recovery of oil; there is a vast difference of opinion among geologists and petroleum engineers as to whether underground waste as such is susceptible of proof in any case, and such theory is not at the present time a substantive fact in petroleum engineering (Rec., pp. 252 and 265); that there is not now in geology or petroleum engineering any recognized or accepted method of determining underground waste;

[fol. 198] (46) That conservation is the utilization of any product with a maximum of efficiency and a minimum of waste (Rec., p. 253);

(47) That the ability of an oil producing reservoir to produce oil under the energy of gas in saturation is under either hydraulic, volumetric or capillary control; that by the rate of decline of the production and the decline of the pressure in the wells the type of the control in the producing sand may be determined (Rec., p. 258); that if the rate of decline in the pressure is greater than the rate of decline in production the control is volumetric; that if the

rate of decline in production is greater than the rate of decline in pressure the control is capillary; that a producing zone under hydraulic control may be defined as that reservoir in which the laws of hydraulics control (Rec., p. 258);

(48) That the ultimate recovery of oil withdrawn from a producing zone is not determined by the period of time during which such withdrawal is made (Rec., p. 259);

(49) That the intermittent or irregular producing of an oil well tends to make the conditions around the base of the well unstable (Rec., p. 269); that there are instances in the industry in which it has been found that the withdrawal of oil from wells in a very rapid manner results in the greatest possible recovery therefrom (Rec., pp. 260-261);

(50) That in California wide open flow has been used in practically all of the oil fields of that state and it has had the greatest recovery per acre of any oil state in the Union (Rec., p. 262);

(51) That the method of operation that will give the greatest ultimate recovery per acre in the Oklahoma City field is that method of production which will put a barrel [fol. 199] of oil at the top of the ground with the least volume of gas necessary to be utilized in so doing (Rec., p. 263);

(52) That the control of pressure in an oil well may be effected by the installation of tubing inside the casing (Rec., p. 264);

(53) That the factors which govern the production of oil upon a proper gas-oil ratio are natural and artificial (Rec., p. 266). The natural factors are those of production which are the type of reservoir, rock pressure and the character of the oil with the volume of gas. The artificial factors constitute the manner in which the well has been finished, the way it has been tubed, the place in which the flow string has been set and the method of handling the same after it has been completed in the oil bearing sands (Rec., p. 267);

(54) That the character or conduct of a particular well can only be calculated by physical or actual tests (Rec., p. 267);

(55) That the best measure of conservation in the final analysis is the most good that can come to the people from the use of our natural resources (Rec., p. 268);

(56) That the greatest ultimate recovery from the Oklahoma City field will be obtained by flowing the wells therein steadily upon a proper oil-gas ratio that can best be determined from the characteristics of the particular well (Rec., p. 268);

(57) That an oil well may be best operated upon a percentage between 33⅓ and 66⅔ of its capacity (Rec., p. 268);

(58) That if the Corporation Commission desires to bring about the recovery of the most oil in the reservoir in the oil [fol. 200] fields of the state at the least expense to the gas reserve, the volume of oil that is produced by the well should be determined by a proper gas ratio, and if that proper gas-oil ratio be interfered with by an arbitrary ruling in administrative orders the best result cannot be obtained (Rec., p. 269);

(59) That the factor of posted price or market value of any product should not enter into the matter of its conservation (Rec., p. 269);

(60) That neither the evidence before the Corporation Commission nor the findings and orders of the Commission, and/or the evidence offered in this court disclose or show physical waste of oil in the Oklahoma City field;

(61) That upon the contrary such evidence does disclose and show that gross physical waste of gas and gas energy has been at all times openly practiced in that field without restrictive interference for the conservation thereof by order or otherwise, upon the part of the Corporation Commission.

Respectfully submitted.

H. G. McKeever, Harry O. Glasser, Edgar A. DeMeules, Geo. S. Ramsey. Of Counsel: Nathan Scarritt, Van Stewart, Roy Elam, H. H. McKeever, Garrett Logan, Villard Martin, E. S. Champlin.

[File endorsement omitted.]

[fol. 201] IN UNITED STATES DISTRICT COURT

[Title omitted]

OBJECTIONS TO DEFENDANTS' PROPOSED SPECIAL FINDINGS OF FACT—Filed Aug. 28, 1931

Now comes the Champlin Refining Company, a New Mexico Corporation, Plaintiff, and makes the following objections to the Defendants' Proposed Special Findings of Fact;

That Numbers I, II, III, and paragraphs 1 and 2 of IV, are general upon the allegations of Plaintiff's Third Amended and Supplemental Bill of Complaint, and that Numbers 1, 2, 3, 4, 5, 6, 7 and 8 of Plaintiff's Requested Findings of Fact, present a more accurate statement of the evidence upon the subject matter in the respectively suggested findings, and should therefore be adopted as the finding of facts upon such controverted issues;

That paragraph three of Number IV of Defendants' Proposed Special Findings, is grossly misleading as to the potential production of McCalep Well #1 for March 4, 1931, in that such potential was then carried on the records of the Corporation Commission (See Exhibit #43, p. 2) at [fol. 202] 15,829 barrels; that the potential of said well for April 1st, 1931, was then carried upon the same records (Defendants' Exhibit X, p. 4) at 11,648.7; that in Defendants' said Proposed Findings, the potential so carried is arbitrarily divided by three, which if done will necessarily require the calculation of daily allowable upon a percentage correspondingly three times as great as customarily used in such calculation;

That Plaintiff does not have objection to a finding such as Defendants propose in said paragraph, if the potentials be found in accord with the record as introduced in evidence;

That said proposed finding is open to the further objection that the McCalep Lease includes Lots 30 to 35, and 50 and 51, in Block 2, Roosevelt Place Addition, (Record p. 292);

That paragraph four of Number IV of Defendants' Proposed Special Findings, is likewise grossly misleading as to the potential production of Naden Well #1, for March 4, 1931, in that such potential was then carried on the

records of the Corporation Commission (See Exhibit #43, p. 2) at 16,757 barrels; that the potential of said well for April 1st, 1931, was then carried upon the same records (Defendants' Exhibit X, p. 4) at 9,915.54; that in the Defendants' Proposed Findings the potential so carried is arbitrarily divided by three, which if done will necessarily require the calculation of daily allowable upon a percentage correspondingly three times as great as customarily used in such calculation (see Order #5445, Exhibit #33, authorizing the taking of the potentials herein set forth);

That the Defendants write the words, "revised formula" in said finding, to warrant the unusual and greatly reduced potential so found for said wells, and but confuse the issue in so unnecessarily doing;

That the identical confusion follows proposed finding of potential production of Seal Well #1, paragraph five, Number IV, at 148.96 barrels for April 13, 1931, which should [fol. 203] have been 440.88 barrels (Defendants' Exhibit X, p. 4); and for Seal Well #2, at 272.72 barrels, which should have been 818.16 barrels (Defendants' Exhibit X, p. 4);

That Plaintiff does not object to Defendants' Proposed Finding Number V, except that it most earnestly requests that its Number 9 should be allowed in connection therewith; and that that portion of said finding which proposes that, "there was no evidence that closing in or pinching in its wells in the Oklahoma City field will cause water to enter the oil and gas sand, or damage its wells, or result in waste of oil and gas", should not be granted, for the reason that an affirmative finding of fact should not be made upon a technical subject, merely because the record thereon be silent;

That Plaintiff objects to the following Proposed Special Findings of Fact by Defendants, as set forth in Number VI thereof:

(a) "None of said producing formations overlie any of the others",

which finding should be limited to pools (Rec. p. 65) instead of formations;

(b) "with a potential production of 564,908 barrels per day determined from gauges made under rules and regulations of the Commission",

when in truth and in fact, Rec. p. 141) such gauges were actual physical gauges, made after March 15th, and that prior thereto the scientific decline curve method (after consultation with Engineers of the Companies who had made a study of decline curves) at 3% per month (Rec. pp. 141 and 142) had been applied;

That decline curves on the Seminole field had been available since 1927, (Rec. p. 141); and that actual gauges were slightly higher than "decline curve" gauges (Rec. p. 142);

(c) That said wells in the Seminole area

"Are separately owned and operated by 80 different corporations, partnership and individuals, * * * and 62 or about 77% thereof known as non-integrated companies",

[fol. 204] is totally outside the evidence, in-as-much as such statement but represents an unwarranted conclusion from the caption of Exhibit #14, Rec. p. 124;

The further proposed finding that,

"these non-integrated producers own 894, or 37% of the producing wells, with a potential production of 225,507 barrels of oil per day, or about 40% of the total production of the area",

includes the following named companies—contrary to the most superficial knowledge of the public—as non-integrated companies:

Skelly Oil Company,
Indian Territory Illumin. & Oil Co. (owned by Cities Service)
Sinclair Oil & Gas Company,
Phillips Petroleum Company,
Wirt Franklin,
Louisiana Oil & Ref. Co., (Standard of New Jersey)
Mid-Kansas Oil & Gas Co., (Ohio Oil Company)
Atlantic Oil Producing Co., (Atlantic Refining Co.)
Twin States Oil Company,
British-American Oil Co., (Imperial of Canada)
Blackwell Oil & Gas Company; (Exhibit #14, Rec. p. 124);

That the above named integrated companies in fact so wrongfully classified as non-integrated, own 563 wells of

the 894 referred to by Defendants, with a total potential of 108,129 barrels of the 225,507 barrels so erroneously classified by Defendants;

(d) That the proposed finding (Paragraph 4, Number VI) that,

"On June 15, 1931 there were 746 producing oil wells in the Oklahoma City field having a total potential production of 2,987,993, calculated according to the Corporation Commission formula",

is open to the same objection heretofore made, in that the potential for said wells for said date, as carried upon the records of the Corporation Commission, was 8,963,977 (Exhibit #24, Rec. p. 217), and that the use of the so-called [fol. 205] "revised formula" is but an effort to minimize the comparison of such potentials when made, with Seminole potentials, as carried upon said records of the Corporation Commission;

That the defendants again ask this Honorable Court to find that

Skelly Oil Company,
Indian Terr. I. & O. Co.,
Phillips Petroleum Co.,
Wirt Franklin,
British-American Oil Co., and
Chatham Oil Company, (Exhibit #18, Rec. p. 169);

are non-integrated companies;

That the absurdity of Defendants' proposed finding is made evident, when attention is called to the fact that Sinclair Oil & Gas Company is found to be a non-integrated company in Seminole, and an integrated company in Oklahoma City; and that Skelly Oil Company and Indian Terr. Ill. & O. Co., are non-integrated companies in Oklahoma City, while C. C. Julian and the Century Company are integrated ones;

That the Plaintiff objects to the further finding in said paragraph, that

"the Oklahoma City field has been regulated by orders, rules and regulations of the Corporation Commission, made under said act for the purpose of preventing waste and protecting the co-equal rights of the several owners of the

surface and their respective leases, * * * by limiting the production from each well to that proportion of its potential production which the reasonable market demand for oil from said field as found from the evidence before it to exist from time to time bore to the potential production therefrom at the time",

for the reason that all that has been done by the Corporation Commission in this regard, has been done in the interest of a price-fixing arrangement and without regard to conservation;

That the Plaintiff objects to the Defendants' Proposed Special Finding No. VII, in the following particulars:

(a) That following the word "demands" in Line 7, Paragraph 1, should be included the further finding:

[fol. 206] together with the failure or inability to provide adequate steel storage;

(b) The Plaintiff objects to the further proposed finding in the same paragraph

"that it is a well known fact in the oil industry that oil can be best conserved by holding it in storage in the natural underground reservoir";

that such finding, if made, must be limited to that period of time prior to any drilling in any such reservoir, for as a matter of fact and as the evidence discloses, after drilling has been commenced in any producing area, the oil there to be ultimately recovered, can best be conserved by the earliest possible reduction to possession, rather than to attempt to conserve the same by rules and regulations that may, or may not, prove efficacious;

(c) The Plaintiff objects to Paragraph 2 of Defendants' Proposed Special Finding No. VII, for the reason that the same is but a statement of half truth;

That to permit oil wells in flush or semi-flush pools to flow wide open does result "in the use of an excessive amount of gas pressure and an uneconomical and wasteful use of gas energy", which fact remains constant whether production be so continued upon such wide open flow for a period of two hours on a given day under proration orders,

or be so continued for a period of twenty-four hours upon the identical day without any regulation of any kind, the resultant waste of gas energy being purely relative under such circumstances;

That this Honorable Court should find

"that conservation of gas energy can only be brought about by the adoption of rules and regulations of the Corporation Commission requiring the production of oil and gas upon and in proper ratio during any period of time that any such well shall be produced";

(d) That the word "storage", fourth line from the bottom of third paragraph, Defendants' Proposed Special [fol. 207] Finding VII, should be eliminated from a definition of non-integrated companies, in that storage is and may be available to integrated, as well as non-integrated, companies, and the failure to build gas-tight steel storage does not ipso facto classify any oil company, for obviously storage should be a part of any strictly producing company's business, and it is the producing company only, that is properly identified in the industry as non-integrated, thereby being distinguished from the company engaged in the transporting, refining and marketing branches of the business;

(e) That Plaiatiff objects to all of the Defendants' Proposed Special Findings of Fact in paragraph 3 of No. VII, with relation to "earthen storage", the damage to oil in creek beds, the possibility of rain washing the same away, or the evaporation of the higher volatile contents thereof, by exposure to the air, for the reason that same is entirely historical and without significance in this controversy, as found by Commissioner Paul Walker in his Order No. 5437, of February 14, 1931, wherein the Commission put the matter of earthen storage and all of its attendant difficulties, once and for all, definitely out of consideration. We quote the order:

"Another element of physical waste, not present, but contemplated or threatened, is that of earthen storage. Witnesses indicated that if an allowable taking is permitted far in excess of either the demand of the market of the ability of the market to absorb, operators who do not

have access to pipelines as advantageously as their neighbors and who are not provided with steel storage, will attempt to place oil in earthen storage. With this argument, we are not greatly impressed. It harks back to the days of the Cushing and the Healdton Fields, when the State had neither a conservation law nor a conservation policy.

Earthen storage is now forbidden in any field in Oklahoma both by statute and by specific orders of this Commission. Earthen storage cannot be had except it be accompanied by physical waste as well as untold hazards in a [fol. 208] field thus proximate to a great city. Our orders specifically prohibit the allowing of oil 'to leak or escape from natural reservoirs, wells, tanks, containers or pipes'. (See rule 12 of this Commission's Order No. 1299.)

We think, however, in this connection, in-as-much as the question has been raised that we should give specific notice that earthen storage cannot either be used or tolerated in the Oklahoma City field."

The Plaintiff further objects to the special finding in said paragraph that

"more waste oil ran down the creeks in the Glenn Pool than was ever produced in Illinois",

for the reason that this Honorable Court may with the same propriety say that under proration more gas and gas energy have been wasted in the Oklahoma City Field than has been produced in Pennsylvania during all of the life of the industry in that State.

(f) That the final paragraph of Defendants' Proposed Special Finding No. VII, to the effect that

"conditions of waste * * * similar to those described in these old orders would again arise",

cannot be adopted in view of the definite position announced by the Corporation Commission in its Order No. 5437 just quoted;

The Plaintiff objects to the Defendants' Proposed Special Finding of Fact No. X, in the following particulars:

(a) To the omission of Section 2 of the Oklahoma Oil Conservation Act approved February 11, 1915, in the first paragraph thereof, and respectfully asks this Honorable Court to include Section 2 of said act in such finding;

(b) Plaintiff further objects to the proposed special finding in the third paragraph of No. X, to the effect that

"the abstract of the evidence (upon the subject of waste) before the Commission so introduced sustained its findings of fact therein",

for the reason that such finding would be unwarranted upon the record so introduced;

[fol. 209] That plaintiff objects to Defendants' Proposed Special Finding of Fact No. XV, for the reason that said finding fails to include therein the reason for the action of the Corporation Commission indicated by said Journal Entry;

That in truth and in fact said Corporation Commission did, on the 4th day of March, 1931, announce from the bench pursuant to a hearing on the application of Wirt Franklin, and others, that an increase in the allowable taking for the Oklahoma City field would be entered, and that immediately thereafter the Governor of the State addressed to the Commission a letter, a portion of which is quoted in said Journal Entry, as follows:

"On yesterday you made an order increasing the flow of oil and placing a construction on the order heretofore made as to allowing only two-thirds of the fields allowable to be produced. Personally, I do not believe that the order was the direct cause for reduction of the price but used as an excuse. I believe that the intention was to do so by certain big companies as soon as Congress adjourned. Therefore, I would ask the Commission to reverse the order placing the Oklahoma City field back where it was prior to your order of yesterday and then that everything relative to oil, both before the Commission and before the Legislature be held in abeyance until after the meeting to be held in Texarkana, Arkansas, on Monday, March 9th.

"It is my hope that at this conference there can be a plan worked out that will reach the situation.

"The sacrifice that must needs be made by the Independent Producers should be matched by the importers in like sacrifice in importing oil. In other words, we should remove all excuse for reduction on the part of the State."

That after the receipt of said letter, the Corporation Commission did rescind its oral announcement of March

4th solely upon account of the request of the Governor, which was predicated, as the letter clearly indicates, entirely upon an effort upon the part of the Governor to maintain a price for crude oil.

[fol. 210] That plaintiff objects to the Defendants' Proposed Special Finding of Fact No. XXI, in the following particulars:

(a) To this Honorable Court finding as a fact, that which the Corporation Commission did find as such as therein set forth in the second paragraph thereof, for the reason that the findings therein set forth are not supported by the evidence in this cause, and that this Court may do no more than find that the Corporation Commission did so find upon the evidence that was before it; that it would be error for this Court to find a fact from a finding of the Commission upon evidence before that Commission, and not submitted to this Court; that the finding of this Court should go no further than to include a finding that the Corporation Commission did so find;

(b) That the plaintiff objects to this Court finding, as the Corporation Commission did find, as set forth in paragraph 4 of said order, that

"The curtailment plan in this order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied",

for the reason that the evidence in this cause does not so warrant, but sustains the contrary finding, that to conserve gas and gas energy, crude oil in saturation therewith should be produced upon a proper gas-oil ratio only, and that such production should be without regard to the time of operation of such well, or wells;

Plaintiff objects to the defendants' Proposed Special Finding of Fact No. XXII, in the following particulars:

(a) That following the words "to the amount of", and before the words "the reasonable", fourth line from the bottom of page 31, being paragraph 2 of Order No. XXII, should be added the words, "what the Commission found to be";

(b) The Plaintiff further objects to the finding in the conclusion of said paragraph in the following [fol. 211] words,

"that the present restriction of production of oil therein conforms to the amount of the reasonable market demand for oil produced therefrom,"

for the reason that there was no evidence offered in this cause with relation to market demand, and that findings of the Corporation Commission upon evidence in that connection offered before the Corporation Commission, but not in the record in this cause, can not be by this Court used as evidence of ultimate facts, and that any finding that this Court may make with reference to matters that were wholly before the Corporation Commission must of necessity be limited solely to a finding of what the Corporation Commission did so find;

(c) That the plaintiff makes the same objection to the entire finding in the concluding paragraph of No. XXII, for the reason that the whole of the same represents an effort to have this Court find as facts, matters that are outside the record here, upon the assumption that the Corporation Commission having so found, this Court is upon that fact alone required to find likewise;

The plaintiff objects to the Defendants' Proposed Special Finding No. XXIII, for the following reason: The failure to include after the words "as nearly as", and before the words "could be done", third line from the bottom of said paragraph, the words, "the Corporation Commission found";

The plaintiff objects to the Defendants' Proposed Special Finding of Fact No. XXIV, in the following particulars:

(a) That this Honorable Court should do no more than find that there was at the times the orders in question were made and entered, an actual overproduction of crude oil in excess of market demand in Oklahoma and throughout [fol. 212] the oil producing states of the United States, and particularly insofar as Oklahoma be concerned, in the flush Oklahoma City pool;

(b) That the actual overproduction in the respective areas thereof, and at the respective times herein mentioned,

constituted an emergency that required conservation of the natural resources of the State;

(c) That the evidence in this cause does not warrant a finding that adequate gas-tight steel storage above ground was neither available nor possible of construction as the flush fields were being over-developed, with which to care for such overproduction, but that in any event crude oil within the State of Oklahoma will not go into open earthen storage or be otherwise physically wasted. Corporation Commission Order No. 5437, of February 10, 1931, plaintiff's Exhibit "33", record page 281;

(d) * * *

(e) That this Honorable Court can do more than find that accordingly it was necessary in order to prevent the physical waste of petroleum and natural gas as irreplaceable and natural resources of the State of Oklahoma, and in order that the same might be conserved for the ultimate use of the greatest number of people of the State that the production within said flush and semi-flush pools within the State should be restricted in the interest of conservation, under such regulations as would prevent only the physical waste of any part of such natural resources;

Plaintiff objects to that part of paragraph 10 of Defendants' Proposed Special Findings No. XXV, which reads as follows:

"The Court finds that a gauge for a longer period, or a gauge of all the wells in the Oklahoma City field at the same time with all wells open to full production, would be physically impossible",

together with concluding paragraph of such Special Finding No. XXV, which reads as follows:

[fol. 213] "The court finds from the evidence in this case that this method of arriving at the potential is justified by the circumstances and is reasonable and that since it was applied alike to all wells it has not resulted in discrimination as between producers or between pools",

for the reasons:

(a) That such findings are not supported by the evidence;

(b) That the taking of an actual gauge in Seminole and a calculated gauge in Oklahoma City, is not justified by the circumstances, is unreasonable, and does result in discrimination between those two pools;

That to take an actual gauge of any well in the Oklahoma City field would require the opening of offset wells in the same producing sand only for the period of time in which such gauge was being taken, and that all of the finding proposed by defendants concerning the great loss that would be incident to opening the entire field simultaneously while a gauge of a particular well would be taken, should be without consideration in this Honorable Court. As illustrative of the contention, let it be assumed that a well in the Wilcox sand is about to be gauged, how could any well in the Johnson or School Land sand be in anywise concerned therewith?

That this plaintiff requests this Honorable Court to find, upon the contrary, that the method of the taking of the potential of the wells in the Oklahoma City field was so designed in order that fictitious potentials would be created, and thereby build up for the producing companies represented in principal ownership thereof, an adequate supply of crude oil at all times, and at the same time enable the greater area of that field, in the producing horizon known as the Arbuckle lime, to produce wells in that area upon practically a full-time basis to make the percentage of the allowable production thereof;

That from all of the evidence offered in this connection, [fol. 214] this Honorable Court should find that the method of taking potentials in the Oklahoma City field did discriminate between owners of wells in the respective producing horizons in that field and did discriminate against the Oklahoma City field and in favor of the Seminole area;

Plaintiff objects to that part of Defendants' Proposed Special Finding of Fact No. XXVI in the following particulars:

(A) To that part of paragraph two thereof wherein it is said that:

"Each and all of said appointments were consented to by the Governor expressed in writing,"

for the reason that the present Governor of the State has not at any time consented in writing or otherwise, to any of said appointments, notwithstanding he has been continuously in office since the second Tuesday of January, 1931;

(b) Plaintiff requests, in conformity with the evidence, that following the words "all producers", and before the words "are permitted", third line from the bottom of the fourth paragraph in said Defendants' said Proposed Special Finding No. XXVI, the words, "in the Seminole area only" be added to such finding;

(c) To that part of paragraph five of said proposed Special Finding of Fact, wherein the following language is used:

"are paid by voluntary contributions of a great majority of the producers in the Oklahoma City field",

inasmuch as the testimony of the witness, McLennon, record page 204, reveals that but twenty out of about fifty producers in said field contribute to such fund;

(d) To that part of paragraph six, wherein this Honorable Court is requested to find that

"there have been two sessions of the Legislature of Oklahoma, one beginning in January, 1929, the other in January, 1931, and the practice referred to in said special find-
[fol. 215] ing has not been prohibited by the Legislature, and no funds otherwise provided for the payment of such agents",

for the reason that the Court might with equal propriety find that there were a number of bills offered in the Legislature to repeal the entire bill until which all of the so-called proration orders were made, other bills were introduced to modify the same, some to amend, and some to destroy, that hearings were held, arguments pro and con were made, and out of all of the effort came nothing;

(e) To that part of the same paragraph which finds that the "umpires are not officers of the State of Oklahoma", for the reason that by the terms of the law, such umpires are officers of the state and as such required to take an oath of office, which the record in this case discloses that the said Ray Collins has not done;

(f) To that part of the last paragraph of said Special Finding to the effect that the plaintiff has not "suffered any injury by reason thereof", which is an ironical finding, in view of the language employed immediately antecedent thereto; that Corporation Commission Order No. 5445, Plaintiff's Exhibit No. 33, record page 281, reveals that this Plaintiff was compelled to go before the Corporation Commission and conduct a long expensive hearing to be permitted to take a potential upon two of its wells, which arbitrary requirement was the result of a manifestation of the spleen and czaristic powers of the so-called umpire, Otto Bradford, whose arbitrary stand in the matter was ultimately overruled by the Corporation Commission, but nevertheless evidences an unfair attitude toward this Plaintiff, and does tend to build up a system that has no place in a country of free institutions;

[fol. 216] Plaintiff objects to Defendants' Proposed Special Finding No. XXVII, in the following respects:

(a) To that part of paragraph one thereof, wherein it is stated,

"that the said pools were not all served in common by the same pipelines and purchasers",

for the reason that the Seminole area and the Oklahoma City area were served by six major pipeline companies operating in both fields and that said pipeline companies so serving both fields owned 63.57 of the total pipeline capacity in the Seminole field, and at the same time owned and controlled 68.75 percent of the Oklahoma City field (See Plaintiff's Exhibits "16" and "17"); that the six pipeline companies referred to are the Empire, affiliated with the I. T. I. O., Oklahoma Pipeline Company, affiliated with Carter, a subsidiary of the Standard of New Jersey, Prairie, Magnolia, Stanolind, and Shell;

(b) To that part of paragraph one thereof, wherein it is stated:

"That the reasonable market demand for certain of them was greater in proportion to the potential production thereof than in the case of others",

for the reason that the evidence does not warrant such finding, inasmuch as gravity of oil and the ultimate recov-

ery of gasoline and other content therefrom are the only factors that determine market demand therefor, when two producing fields that are practically seventy percent served by the identical pipelines are being considered by a prospective purchaser;

(c) To that part of paragraph one thereof, wherein it is stated:

"The Seminole area is in a more favored location with reference to the long established, large inter-state trunk pipelines than is the Oklahoma City field, and naturally has a larger market demand",

for the reason that the evidence does not warrant such [fol. 217] finding inasmuch as market demand in any oil field does not depend upon that oil field's proximity to the trunk line, but rather upon the factor of quality of product and a pipeline therefrom to the trunk line;

(d) To that part of paragraph one thereof, wherein it is stated that:

"The Commission and also Umpire Collins and the so-called State Wide Advisory Committee (appointed by producers) have endeavored to induce the purchasers of crude oil to increase the amount of their purchases from the Oklahoma City field,"

for the reason that the evidence does not warrant such finding; and in this connection, we quote from the Corporation Commission Order No. 5437, of February 10, 1931, Plaintiff's Exhibit "33", record page 281:

"Thus those desiring immediate opportunity to market an increased amount of crude petroleum generally favor an increase in allowable takings under proration, whereas those more anxious to preserve the market stability and to protect interests elsewhere generally favor the maintenance of the present percentage of allowable takings from the Oklahoma City field and the least possible market competition." * * *

"The Oklahoma City field has been prorated until its production has been reduced to the minimum, now approximately 80,000 barrels. Some of the chief producers in

this field have made little or no attempt to market their crude petroleum, hoping for a day when the production generally would have so declined or have been so taken care of as to bring about a greater or more advantageous market for the Oklahoma City field."

(e) To that part of paragraph one thereof, wherein it is stated that,

"These circumstances justify and have necessitated a larger percentage of allowable production in the Seminole area than that in the Oklahoma City field,"

for the reason that the evidence does not warrant such finding, and the circumstances recounted in said special finding of fact are not the circumstances upon which the Corporation Commission have relied in its allocation of market demand;

(f) To all of paragraph two thereof, for the reason that the evidence does not warrant such finding, and upon the [fol. 218] contrary, the Corporation Commission in its Order No. 5437, of February 10, 1931, Plaintiff's Exhibit "33", record page 281, did specifically find that,

"The Oklahoma City field, the evidence indicates, is being discriminated against. It is our duty, if possible, to give those who have oil to sell an opportunity to dispose of it through so regulating proration as not to shut off the markets offered."

Plaintiff objects to that part of Defendants' proposed Special Fndings of Fact No. XXVIII, in the following particulars:

(a) To that part of paragraph one thereof, which reads as follows:

"That none of the Orders of the Commission have been made and entered for the purpose of fixing or maintaining the price of crude oil, or that the orders have had that effect",

for the reason that the evidence does not warrant such finding, and upon the contrary sustains plaintiff's conten-

tion that the orders of the Commission as entered, without regard to the intention thereof in such entry, have had the effect of endeavoring to fix and seeking to maintain the price of crude oil and this Honorable Court should so find;

(b) To that part of paragraph one thereof, which reads,

"There was no evidence introduced at the trial of this cause showing, or tending to show, that the orders of the Commission were intended to fix or control the price of crude oil",

for the reason that it is Plaintiff's contention that the greater portion of the testimony offered in this cause sustains the contrary statement, and this Honorable Court is requested to specifically so find;

Plaintiff objects to Defendants' Proposed Special Finding of Fact No. XXIX, for the following particulars:

(a) That the subject matter thereof has already been entirely covered in Defendants' Proposed Special Finding [fol. 219] of Fact No. X;

(b) That said proposed finding, in its entirety, is unwarranted by the evidence;

(c) That said finding is but a categorical statement of the theory of proration as practiced in Oklahoma, and does not have for its background conservation of the natural resources of the state, in the prevention of the physical waste, whether upon the surface or underground;

Plaintiff objects to that part of Defendants' Proposed Special Finding of Fact No. XXX, in the following respects:

(a) To that part of paragraph one thereof, which states that,

"The orders, rules and regulations do not operate to prevent or restrict the sale or transportation in interstate commerce of any oil produced,"

for the reason that the same is not warranted by the evidence, and upon the contrary, a burden upon interstate commerce in the transportation and marketing of crude

oil so produced in the State of Oklahoma, is so imposed by said orders, rules and regulations, and this Honorable Court is specifically requested to so find;

(b) To that part of paragraph one, which states that,

"There is no evidence that the Commission intended by their orders or rulings to limit the amount of oil entering interstate commerce for the purpose of controlling the price of crude oil or its refined products,"

for the reason that the same is not warranted by the evidence, and that upon the contrary the rules and orders of the Commission without regard to the intention in the promulgation thereof, have had the effect of imposing such burden upon interstate commerce, and as a result thereof have enabled the major producers in the Oklahoma City and Seminole areas to control the price of crude oil produced therein, and to control upon the market the price of the refined product to be obtained therefrom, and this [fol. 220] Honorable Court is specifically requested to so find;

The Plaintiff requests this Honorable Court to add to Defendants' requested Proposed Special Finding of Fact No. XXXI, the following:

"That on June 13th, 1931, this Court entered its order permitting the Plaintiff to produce from its wells in the Oklahoma City field now drilled or hereafter to be drilled, 10,000 barrels of crude oil per day, conditioned upon the giving of a bond in the sum of $200,000.00, that the Plaintiff would pay any damages that may finally be adjudged to have accrued to any person by reason of any violation or violations by the Plaintiff of such proration order or orders, if any, which may be adjudged finally to have been sustained, in the event such proration order or orders shall be ultimately held to have been valid;

That thereafter, on the 22nd day of June, 1931, the Plaintiff did file with the Clerk of said Court, its bond as set forth on pages 123 and 124 of Plaintiff's Third Amended and Supplemental Bill of Complaint, as finally filed by leave of Court in this cause, and that commencing with the 23rd day of June, 1931, the Plaintiff did produce oil in conformity with said order from its wells in the Oklahoma City

field to the extent of approximately 10,000 barrels per day;

That on the 5th day of August, 1931, upon the conclusion of the argument in this cause and the announcement of the Court's opinion, the said order of June 13, 1931, permitting the Plaintiff to so produce oil within the terms of said order and the bond given thereon, was vacated, set aside and held for naught, to all of which the Plaintiff in open court did then except and exception was allowed."

Respectfully submitted.

H. G. McKeever, Harry O. Glasser, Edgar A. DeMeule, Geo. A. Ramsey, Counsel for Champlin Refining Co. Of Counsel: Nathan Scarritt, Van Stewart, Roy Elam, H. H. McKeever, Garrett Logan, Villard Martin, E. S. Champlin.

[File endorsement omitted.]

[fol. 221] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY OF DEFENDANTS TO PLAINTIFF'S OBJECTIONS TO DEFENDANTS' SUGGESTED SPECIAL FINDINGS OF FACT—Filed Aug. 31, 1931

Counsel for defendants received through the mail on this, the 24th day of August, 1931, the "Objections to Defendants' proposed Special Findings of Fact". It is obvious that few, if any, of the objections have any merit whatever, in view of the memorandum opinion of the majority of the judges constituting this court. It may expedite the disposition of the matter if a brief explanation is made in connection with certain specific suggested findings to which objection has been made.

Defendants' Suggested Finding No. IV

The only objection made to this finding is a statement of the potential production of plaintiff's wells McCalep No. 1, Naden No. 1, and Seal No. 1 and No. 2. Since it is admitted by all parties that to multiply by six the amount of oil produced during the four-hour open flow of wells in the Oklahoma City field while all neighboring wells are shut

in gives a greatly exaggerated daily potential production for each well and for the field as a whole, and since the [fol. 222] Corporation Commission in its order No. 5437 dated February 10th, 1931, prescribed the method of calculating the daily average potential based on the four-hour gauge that is set forth in suggested finding No. 14, and since, according to the testimony of plaintiff's witness, Clifton, the result thus arrived at is substantially correct (Record 43 to 45), and in order to avoid confusion, we thought it best to state the daily average potential production of the Oklahoma City field and of any particular well therein in terms of the result of the method of computation prescribed by the Commission on February 10th, and since followed by it in determining the potential production of the field and the basis on which the percentage of daily allowable production is prescribed in each of the orders promulgated since that date. In our judgment, by using the same method of calculating the daily potential from the four-hour gauge throughout the findings, confusion is avoided rather than created, and more accurately reflects the potential production based upon an actual open flow of all wells for twenty-four hours continuously, if it were possible to gauge the wells in that way.

Defendants' Suggested Finding No. V

This finding states the facts with reference to the plaintiff's ability to transport oil from the Oklahoma City and Greater Seminole fields and its storage capacity at its refinery, and that it has and is able to utilize an amount of oil in excess of that it is allowed to produce under the orders of the Corporation Commission without physical waste. We can not see that the cost of steel storage or the waste therefrom has any bearing on that issue. This suggested finding covers the allegations of paragraph XXV of the third amended bill. In addition to the facts found above [fol. 223] to be true, it was further alleged in that paragraph that closing in or pinching in the plaintiff's wells would cause water to enter the oil and gas and result in irreparable damage. There was absolutely no evidence offered to sustain that allegation. It being one of the issues raised by the pleadings, we think it proper that an appropriate finding be made thereon.

Defendants' Suggested Finding No. VI

(a) We cannot see the materiality of this objection.

(b) The statement of potential production of the Greater Seminole field as of June 15th, 1931, is taken from plaintiff's Exhibit No. 14 prepared by Mr. Collins, who stated that the information contained therein was accurate and correct to the best of his knowledge. (Record No. 124) The rule sand regulations of the Corporation Commission prescribing the method by which the gauge should be taken in the Seminole field and the method of estimating the potential in certain pools by the application of the decline curve is set forth in paragraph III of the decretal portion of the order No. 5413 dated December 30th, 1930. (Plaintiff's Exhibit No. 33)

(c) The number of the non-integrated producers in the Seminole field, the number of wells owned by them, the percentage to the whole, their potential production and the percentage to the whole, as stated in this suggested finding, is a matter of simple calculation from plaintiff's Exhibit No. 14. The accuracy of the figures given is not questioned. It is suggested that certain companies listed as non-integrated in this exhibit are known by the public to be integrated producers. It may be that some of the companies listed as non-integrated producers in the Seminole field do [fol. 224] own refineries and do have pipe line connections from their refineries to other fields. But the deduction from this exhibit and the actual fact is that the companies named by the plaintiff as being known to the public as integrated producers do not have any pipe lines extending into the Greater Seminole field owned or controlled by them, and they are entirely dependent upon other companies to purchase and transport the oil produced by them in the Seminole field. The exhibit is the only evidence in the record as to which companies having production in the Seminole field are able to transport the same through pipe lines owned or controlled by them to refineries operated by them or associated companies. As a matter of fact, the exhibit is correct so far as the Greater Seminole field is concerned.

(d) The objection to the statement of the total daily average potential production of the Oklahoma City field

has been covered above. The potential as stated in the suggested finding is according to the method of computation prescribed by the Commission. We do not understand why plaintiff's counsel object to a statement of the potential which its own witness believes to be substantially correct, unless the statement of a greatly exaggerated potential arrived at by multiplying the four-hour gauge by six would have a tendency to show that purchasers are discriminating against the Oklahoma City field in favor of the Seminole field. Certainly in the interests of justice, when the potentials of the two fields are compared for any purpose, the basis of comparison should be the same as far as practicable. There is nothing absurd in the finding that the Sinclair Oil & Gas Company is a non-integrated producer in the Seminole and an integrated producer in the Oklahoma City field. The reason is that the Sinclair Oil & Gas Company through its subsidiaries has pipe line connections [fol. 225] with its wells in the Oklahoma City field while it has none with its wells in the Seminole field. Neither the Skelly Oil Company nor the Indian Territory Illuminating Oil Company has pipe lines extending into the Oklahoma City field, while C. C. Julian and the Century Oil Company have their own pipe lines extending from their wells in the Oklahoma City field to their own refineries. The suggestion that the court should find that the proration orders are a price-fixing arrangement instead of for the purpose of preventing waste and the protection of the co-equal rights of those having the privilege of producing from the Oklahoma City field has been determined by a majority of the court contrary to plaintiff's contention. Naturally, the special finding of fact will be in accordance with the memorandum opinion of the court.

Defendants' Suggested Finding No. VII

(a) The suggested finding states the exact fact. The interpolation proposed by plaintiff would not be proper.

(b) The statement here objected to is taken from the memorandum opinion of the court.

(c) The paragraph here objected to is likewise taken from the memorandum opinion of the court, and is a statement of the full truth.

(d) We see no point in this objection. All refineries necessarily have some storage facilities in order to assure themselves of a constantly available supply of crude oil and so that they may not be dependent upon pipe line deliveries from day to day.

(e) The finding here objected to simply recites the conditions actually existing at the time of the enactment of the law and indicates one of the evils the legislation in ques- [fol. 226] tion was designed to prevent, an evil which under the same conditions would occur again unless restrained. True it is that the Commission by its order No. 5437 prohibited earthen storage. But, in denying a producer the right to resort to earthen storage, the Commission at the same time under the power conferred by the law protected him against drainage by limiting the production from the various pools to the reasonable market demand therefrom. The Commission not only prohibited earthen storage but at the same time removed the necessity therefor. Like the cure for disease, the best remedy for an evil is to remove the cause.

(f) This has been disposed of in connection with (e).

Defendants' Suggested Finding No. X

(a) The memorandum opinion of the court disposes of the contention that Section II is a vital part of the authority conferred upon the Commission to make the orders in question. The court has held that that section is not a necessary or inseparable part of the Act.

(b) The abstract of evidence referred to is precisely the same as that submitted to the court in the application for a temporary injunction. The majority of the court then found, as upon the present hearing, that the evidence was sufficient to support the findings of fact of the Commission.

Defendants' Suggested Finding No. XV

In this finding, as in all others pertaining to the orders of the Commission, we thought it important to state only the substance of the decretal part of the orders and that the reasons therefor were immaterial.

[fol. 227] Defendants' Suggested Finding No. XXI

(a) Objection is made to this court finding the same facts found by the Commission, as set forth in the portion of order No. 5369 quoted, for the reason that there was no original evidence before this court to support such finding. We think counsel is in error. The testimony of J. R. McWilliams and of E. F. Guidinger, as well as other witnesses, clearly supports every fact recited. Indeed, it may be said that the facts recited are so much a matter of common knowledge that the court would be warranted in taking judicial notice thereof. The rule is well established that the presumption is that orders such as herein questioned are reasonable and valid and the burden is upon the one assailing them to establish their invalidity. The presumption is that evidence taken by the Commission supports the findings of fact made, and the one who asserts that the findings are not so supported has the burden of proving it by introducing all the evidence the Commission had before it. We think that, in the absence of any evidence showing that any finding of fact of the Commission is erroneous, this court would be warranted in finding the existence of such fact without any additional testimony; however, on the questions here, there was original evidence before this court supporting each and every statement quoted from the findings of the Commission.

(b) That the curtailment of production of oil will tend to curtail the production of casinghead gas is a self-evident fact. The uncontradicted testimony in this case is that the casinghead gas in the Oklahoma City field is valuable for the extraction of its gasoline content, and the residue for domestic uses as natural gas, and that the capacity of the present casinghead gasoline plants in the Oklahoma City field is sufficient to take care of the casinghead gas being produced under existing orders of the Commission, and [fol. 228] that the production of any additional amount of gas would necessarily result in the waste thereof, and its valuable gasoline content. (See testimony of the witness Dow.) According to the testimony of the witnesses McWilliams and Guidinger, under the existing orders permitting the operation of the wells in the Oklahoma City field under the percentage of potential production plan instead of on

the time basis as originally practiced in the field, each operator can so regulate the production from his well as to utilize the best oil-gas ratio and thereby conserve the gas pressure.

Defendants' Suggested Finding No. XXII

The observations made under No. XXI (a) are applicable to the objection made to this suggested finding.

Defendants' Suggested Finding No. XXIV

The objection made to this suggested finding seems to be that the power of the State and of the Commission under the Act in question is limited to the prevention of physical waste of oil and gas as a natural resource, and does not extend to the regulation of production for the purpose of protecting the co-equal rights of the owners of the surface over a common pool. The majority of the court have rejected this theory of the law, and it neses-sarily follows that the objections to this finding are not tenable.

Defendants' Suggested Finding No. XXV

The portion of the finding objected to is clearly supported by the evidence. The plaintiff's witness Clifton testified that after a five-day wide open flow of all the wells in the Oklahoma City field, in his opinion the daily production would be about two and one-half million barrels in twenty-[fol. 229] four hours. The total pipe line capacity of the Oklahoma City field is only 316,000 barrels per day, and the total capacity of railroad loading racks is only 123,000 barrels per day (Plaintiff's Exhibit No. 17). The Sinclair Oil & Gas Company is the only operator that has a very great amount of storage facilities (Testimony of John H. Wiggins, R. 93.) The reason for taking the four-hour gauge with all of the neighboring wells shut in is that but few producers were equipped with sufficient lease storage to take care of more than the production of one well during that period of time, and in order that the four-hour gauge might be taken by all wells under similar conditions, the rules provided that the neighboring wells should be shut in. Therefore, the suggested finding that a gauge in the

Oklahoma City field for a longer period or with all the wells open to full production at the same time would be a physical impossibility is clearly sustained by the evidence. Since the gauges of all the wells in the Oklahoma City field were taken under precisely the same circumstances, it follows that the method could produce no discrimination as between wells in that field. Since the production in the Oklahoma City field is regulated on the basis of the market demand for oil from that field and the production from the Seminole and other areas is regulated on the basis of the market demand for oil from such areas, it is immaterial whether the potentials in different fields are taken in the same way. There is absolutely no evidence to warrant the request of the plaintiff that the court find that the method of taking the potentials in the Oklahoma City field was designed to create fictitious potentials for the benefit of any certain producers.

[fol. 230] Defendants' Suggested Finding No. XXVI

(a) The last order appointing umpires and designating operators' committees for the various prorated pools was made by the Corporation Commission's journal entry No. 1835 on January 9th, 1931, and is a part of plaintiff's Exhibit No. 33. Attached to it is the written consent and approval of W. J. Holloway, then Governor of Oklahoma. Each appointment of an agent prior thereto, shown in Exhibit No. 33, was likewise consented to and approved by the Governor of the state in office at the time of the appointment. We do not know of any rule of law requiring the succeeding governor to re-approve such appointments.

(b) The Interpolation suggested is unnecessary since the context clearly shows that the producers in the Greater Seminole area are the ones who contributed the payments of Mr. Collins' salary.

(c) While on the basis of production, the vast majority of the Oklahoma City producers contributed to the payment of Mr. Bradford's salary, still from the standpoint of numbers of producers, the majority perhaps did not. In order that the statement here criticized may be precisely accurate, it might be well to strike therefrom the words "of a great majority."

(d) The fact of sessions of the Legislature occurring during the time that the umpires' salaries were paid by voluntary contributions of producers was adverted to by the court in its memorandum opinion and constitutes a proper finding.

(e) Under the terms of the law, the umpires are not officers; they are merely agents of the Commission. States and governments have numerous employees who are not, in the proper sense of the word, officers. The provision of the Act authorizing the appointment of agents with the consent of the Governor nowhere provides that an oath of office is required.

[fol. 231] (f) It is a fact, whether ironical or otherwise, that the evidence wholly fails to show that the plaintiff suffered any injury by reason of the method of compensating umpires. It was not even contended in the brief that they had been unfair or had practiced any fraud. At most, it was simply contended that the system afforded a temptation for that end. We do not recall a scintilla of evidence that order No. 5445 was the product of a long, expensive hearing, or that the umpires had acted improperly. The fact seems to be that under the then existing rules and regulations by reason of alleged overproduction in October, the plaintiff was not entitled to open his wells for taking a new potential, and that he applied to the Commission and it granted a modification of the rule so that a new potential could be taken of the plaintiff's overproduced wells as a basis of calculating the amount it had overproduced.

Defendants' Suggested Finding No. XXVII

(a) The evidence discloses that while some pipe line companies have connections in both the Seminole and Oklahoma City fields, yet there are other companies who have connections only in the Seminole field, and still others who have connections only in the Oklahoma City field. Therefore the statement criticized in this paragraph is exactly correct.

(b) "Market demand," as we understand it, means the total number of barrels of oil that all purchasers and other users of oil produced from a given pool desire to purchase or take during a given period. It is true that on account of the difference in quality of the oil, some may desire to pur-

chase or take more oil from one pool than from another, which is a factor in the variance in the market demand from different pools.

[fol. 232] (c) The statement here criticized is warranted by the uncontradicted testimony of the witness Ray M. Collins (R. 180).

(d) The statement here criticized is warranted by the uncontradicted testimony of Mr. Collins (R. 163-164).

(e) Counsel for plaintiff erroneously assumes that the Commission allocates market demand. The evidence discloses that it does nothing of the kind. It simply ascertains from the evidence what the existing market demand is from each pool, and what the demand will probably be during the period covered by the respective orders. The Commission in its several orders simply allocated to each pool the amount of allowed production which the testimony disclosed at the time was the amount of the market demand therefrom.

(f) The discrimination referred to in the excerpt from Commissioner Walker's opinion of February 10th, 1931, is discrimination practiced by some purchasers. He indicated that in his opinion such purchasers could and should increase their purchases in the Oklahoma City field. There is not a scintilla of evidence that the Commission practiced any discrimination against the Oklahoma City field; in fact, all of the Commissions orders indicate a desire to find a greater outlet for oil from the Oklahoma City field and to accommodate the production thereto.

Defendants' Suggested Finding No. XXVIII

(a) There is not a scintilla of testimony that it was the intention of the Commission by its rules and regulations to effect or maintain the price of oil. The only testimony bearing upon this is a recital in one of the Commission's orders to the effect that such was not their intention, and that any effect upon price was merely incidental. It certainly can not be said that the effect of the order was to fix or maintain prices. Exhibit No. 32, prepared and introduced by plaintiff, shows a constant decline in the [fol. 233] price of crude oil from $2.00 in the year 1927,

when the first proration orders were made, down to 35¢ at the time of the trial.

Defendants' Suggested Finding No. XXIX

This finding has reference to the allegations of the bill with reference to each of the orders, that the same were entered without any evidence tending to support the same. The only evidence before the Commission that was offered on this trial was an agreed abstract pertaining to the subject of waste, which abstract was also before the court upon the application for a temporary injunction. In the opinion denying the temporary injunction, the court found that this abstract showed that there was sufficient evidence of waste and threatened waste before the Commission to warrant the findings of fact made thereon.

Defendants' Suggested Finding No. XXX

This finding has reference to the alleged interference with interstate commerce.

(a) The evidence is too clear to admit of the possibility of a doubt that the orders of the Commission pertain to the production of oil, and do not have any bearing upon the disposition of oil after it is produced. The statement here criticized is absolutely accurate.

(b) This is but a repetition of the same objection made elsewhere.

Defendants' Suggested Finding No. XXXI

This suggested finding has reference solely to the steps taken by state authorities to enforce the provisions of the orders against the plaintiff, and fully and accurately recites all that has been done in that connection. We do not see that the addition requested by plaintiff has any bearing on the propriety of the action of the Attorney General [fol. 234] or of the validity of the so-called penalty sections.

We respectfully submit that the findings suggested by counsel for the defendants fully and accurately cover all of the issues of the case. Each and every statement therein contained is supported by the evidence. The statement

upon any question of fact which may be said to be controverted is in accordance with the memorandum opinion of the majority of the court. We feel that the only criticism of the suggested findings that is at all warranted is that they go into too much detail, but in order that every question that may be considered as material would be covered by the findings, we thought it proper to amplify some of the matters more than seemed absolutely necessary. It was our hope that the findings would be so complete that it would be unnecessary for the Supreme Court to review any of the pleadings or the evidence, and that the findings would present a comprehensive and accurate statement of the case.

Respectfully submitted.

J. Berry King, Attorney General; Jess L. Ballard, Assistant Attorney General; W. P. Z. German, Jno. H. Miley, Special Counsel, for Defendants.

[File endorsement omitted.]

[fol. 235] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING PLAINTIFF'S REQUESTED FINDINGS OF FACT—Filed Oct. 17, 1931

Now on this 11th day of September, 1931, came on for hearing the requested findings of fact made by the plaintiff and the Court being fully advised in the premises,

It is ordered that each and all of plaintiff's requested findings of fact be denied and disallowed, whereupon the plaintiff severally excepted to the refusal of the Court to give each of its requested findings of fact, which exceptions are hereby severally allowed.

Dated at Guthrie, Oklahoma, on the day and year first above written.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. —— ——, District Judge.

I dissent. F. E. Kennamer.

[File endorsement omitted.]